

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET



Leadership is a behavior, not a position

KENTUCKY
LAW ENFORCEMENT
DISCIPLINE MANUAL



John W. Bizzack, Ph.D.
Commissioner



Department of
CRIMINAL JUSTICE TRAINING

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The Leadership Institute Branch of the Department of Criminal Justice Training offers a Web-based service to address questions concerning legal issues in law enforcement. Questions can now be sent via e-mail to the Legal Training Section at

docjt.legal@ky.gov

- ▶ Questions concerning changes in statutes, current case laws and general legal issues concerning law enforcement agencies and/or their officers will be addressed by the Legal Training Section.
- ▶ Questions concerning the Kentucky Law Enforcement Council policies and KLEFPF will be forwarded to the DOCJT General Counsel for consideration.
- ▶ Questions received will be answered in approximately two or three business days.
- ▶ Please include in the query your name, rank, agency and a daytime phone number in case the assigned attorney needs clarification on the issues to be addressed.



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NOTE:

General Information concerning the Department of Criminal Justice Training may be found at <http://docjt.ky.gov>. Agency publications may be found at <http://docjt.ky.gov/publications.asp>.

In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docjt.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

PREFACE

The Kentucky Leadership Institute Branch is pleased to provide, as part of its mission, the 2008 version of the Kentucky Law Enforcement Discipline Manual.

Issues associated with law enforcement discipline systems are complex and often not easily understood by the officials who must deal with them. The disciplinary process involves taking complaints, investigation of such complaints, conducting a disciplinary hearing, and reaching a determination of a disciplinary outcome. This Manual was developed to guide and assist law enforcement personnel in handling some of these matters.

The Manual was produced by the staff of the Legal Training Section: Shawn Herron, J.D., CPM; Michael Schwendeman, M.A., J.D., CPM; Thomas Fitzgerald, J.D., M.Ed.; Kelley Calk, J.D.; Kevin McBride, J.D.; Helen Koger, CPM, and Anna Hudgins.

Statutory and non-statutory materials, as well as case law summaries have been provided to assist in navigating the disciplinary process. Information contained within should not be cited as legal authority and is not offered as legal advice, but for educational purposes. Law enforcement personnel should consult with their Agency, as well as local government Counsel, for legal interpretations.

If you have any suggestions concerning this Manual, please bring them to our attention.

Gerald Ross, J.D.
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LAW ENFORCEMENT DISCIPLINE MANUAL

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TAB 1

AGENCY SUMMARY SHEETS

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the FIRST CLASS See TAB 10
CHARGING REQUIREMENTS:	KRS 90.160 KRS 90.190 (1)
NOTICE REQUIREMENTS:	KRS 90.160 KRS 90.190 (1)
HEARING REQUIREMENTS:	KRS 90.190 (1) KRS 90.110 (21)
APPEAL RIGHTS:	KRS 90.190(3) (4)
NOTES:	See KRS 90.150 for personnel exclusions; See Civil Service regs; See Collective Bargaining contract

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the SECOND CLASS See TABS 11 and 3
CHARGING REQUIREMENTS:	KRS 95.450 (1) KRS 95.450 (2)
NOTICE REQUIREMENTS:	KRS 95.450 (3)
HEARING REQUIREMENTS:	KRS 95.450 (3) KRS 15.520 (1)(h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 95.460 KRS 15.520 (2) KRS 15.520 (3) KRS 15.520 (4)
NOTES:	See KRS 95.450 (5) and 15.520(1)(b)(d) for suspensions; See KRS 15.520 (4) and OAG 84-2, OAG 81-134.

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the THIRD CLASS See TABS 11 and 3
CHARGING REQUIREMENTS:	KRS 95.450 (1) KRS 95.450 (2)
NOTICE REQUIREMENTS:	KRS 95.450 (3)
HEARING REQUIREMENTS:	KRS 95.450 (3) KRS 15.520 (1)(h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 95.460 KRS 15.520 (2) KRS 15.520 (3) KRS 15.520 (4)
NOTES:	See KRS 95.450 (5) and 15.520(1)(b)(d) for suspensions; See KRS 15.520 (4), and OAG 84-2, OAG 81-134.

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the FOURTH CLASS (With Civil Service adopted) See TAB 11
CHARGING REQUIREMENTS:	KRS 95.765 (1)
NOTICE REQUIREMENTS:	KRS 95.765 (1)
HEARING REQUIREMENTS:	KRS 95.765 (1)
APPEAL RIGHTS:	KRS 95.766
NOTES:	See See KRS 95.761 for personnel exclusions; 95.765 (2) for suspensions.

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the FOURTH CLASS (Without Civil Service adopted) See TAB 3
CHARGING REQUIREMENTS:	KRS 15.520 (1)(e) KRS 15.520 (4)
NOTICE REQUIREMENTS:	KRS 15.520 (1)(h) KRS 15.520 (4)
HEARING REQUIREMENTS:	KRS 15.520 (1)(h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 15.520 (2) KRS 15.520 (3) KRS 15.520 (4)
NOTES:	See KRS 83A.080, At will employment

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the FIFTH CLASS (With Civil Service adopted) See TAB 11
CHARGING REQUIREMENTS:	KRS 95.765 (1)
NOTICE REQUIREMENTS:	KRS 95.765 (1)
HEARING REQUIREMENTS:	KRS 95.765 (1)
APPEAL RIGHTS:	KRS 95.766
NOTES:	See See KRS 95.761 for personnel exclusions; 95.765 (2) for suspensions.

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the FIFTH CLASS (Without Civil Service adopted) See TAB 3
CHARGING REQUIREMENTS:	KRS 15.520 (1)(e) KRS 15.520 (4)
NOTICE REQUIREMENTS:	KRS 15.520 (1)(h) KRS 15.520 (4)
HEARING REQUIREMENTS:	KRS 15.520 (1)(h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 15.520 (2) KRS 15.520 (3) KRS 15.520 (4)
NOTES:	See KRS 83A.080, At will employment

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	City of the SIXTH CLASS See TAB 3
CHARGING REQUIREMENTS:	KRS 15.520 (1)(e) KRS 15.520 (4)
NOTICE REQUIREMENTS:	KRS 15.520 (1)(h) KRS 15.520 (4)
HEARING REQUIREMENTS:	KRS 15.520 (1)(h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 15.520 (2) KRS 15.520 (3) KRS 15.520 (4)
NOTES:	See KRS 83A.080, At will employment

KENTUCKY DISCIPLINARY PROCEDURES

(SUMMARY INFORMATION)

AGENCY TYPE:	URBAN-COUNTY GOVERNMENT (under KRS Chapter 95) See TABS 11 and 3
CHARGING REQUIREMENTS:	KRS 95.450 (1) (2)
NOTICE REQUIREMENTS:	KRS 95.450 (3)
HEARING REQUIREMENTS:	KRS 95.450 (3) KRS 15.520 (1) (h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 95.460 KRS 15.520 (2) (3) KRS 15.520 (4)
NOTES:	See KRS 95.450 (5) and 15.520(1)(b)(d) for suspensions; See KRS 15.520 (4) and OAG 84-2, OAG 81-134.

KENTUCKY DISCIPLINARY PROCEDURES

(SUMMARY INFORMATION)

AGENCY TYPE:	CONSOLIDATED LOCAL GOVERNMENT (under KRS Chapter 67C) See TAB 7
CHARGING REQUIREMENTS:	KRS 67C.321 (1) (2) KRS 67C.325
NOTICE REQUIREMENTS:	KRS 67C.321 (1) (2) KRS 67C 323 (1) (2) KRS 67C.325
HEARING REQUIREMENTS:	KRS 67C.321 (1) (2) KRS 67C 323 (1) (2) KRS 67C.325
APPEAL RIGHTS:	KRS 67C.323 (3) (a) (b) KRS 67C.325
NOTES:	KRS 67C.319 KRS 67C.402 KRS 67C.414 See Collective Bargaining Agreement

KENTUCKY DISCIPLINARY PROCEDURES

(SUMMARY INFORMATION)

AGENCY TYPE:	SHERIFF (With Merit Board adopted) See TAB 8
CHARGING REQUIREMENTS:	KRS 70.270 (3) KRS 70.273 (1) KRS 15.520 (1) (e) KRS 15.520 (4)
NOTICE REQUIREMENTS:	KRS 70.270 (1) KRS 70.273 (1) (2) KRS 15.520 (1) (h) KRS 15.520 (4)
HEARING REQUIREMENTS:	KRS 70.270 (2) KRS 70.273 (1) KRS 15.520 (1) (h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 70.273 (4) KRS 15.520 (2) (3) KRS 15.520 (4)
NOTES:	See KRS 70.267 (5) for probationary employee.

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	SHERIFF (Without Merit Board adopted) See TAB 8
CHARGING REQUIREMENTS:	KRS 70.030
NOTICE REQUIREMENTS:	KRS 70.030
HEARING REQUIREMENTS:	KRS 70.030
APPEAL RIGHTS:	KRS 70.030
NOTES:	See KRS 70.030 At will employment

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	COUNTY POLICE (With Merit System adopted) See TAB 9
CHARGING REQUIREMENTS:	KRS 78.445 (2) KRS 78.450 (1)
NOTICE REQUIREMENTS:	KRS 78.445 (1) KRS 78.450 (3)
HEARING REQUIREMENTS:	KRS 78.445 (1) KRS 78.450 (1)
APPEAL RIGHTS:	KRS 78.455
NOTES:	See 78.428 for personnel exclusions

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	COUNTY POLICE (Without Merit System adopted) See TAB 3
CHARGING REQUIREMENTS:	See At will employment
NOTICE REQUIREMENTS:	See At will employment
HEARING REQUIREMENTS:	See At will employment
APPEAL RIGHTS:	See At will employment
NOTES:	See KRS 15.520 See At will employment

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	UNIVERSITY POLICE See TABS 12 and 3
CHARGING REQUIREMENTS:	KRS 164.965 KRS 15.520 (1) (e) KRS 15.520 (4)
NOTICE REQUIREMENTS:	KRS 164.965 KRS 15.520 (1) (h) KRS 15.520 (4)
HEARING REQUIREMENTS:	KRS 164.965 KRS 15.520 (1) (h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 164.965 KRS 15.520 (2) (3) KRS 15.520 (4)
NOTES:	See University Personnel policies.

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	KY STATE POLICE See TAB 5
CHARGING REQUIREMENTS:	KRS 16.140(1)
NOTICE REQUIREMENTS:	KRS 16.140(1) (2)
HEARING REQUIREMENTS:	KRS 16.140(1) (2) (3) (7) (8) (9)
APPEAL RIGHTS:	KRS 16.150(1) (2) (4) (5)
NOTES:	See KRS 16.080

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	KY VEHICLE ENFORCEMENT See TABS 4 and 2
CHARGING REQUIREMENTS:	KRS 15A.371 (4) (5)
NOTICE REQUIREMENTS:	KRS 15A.371 (6) (9)
HEARING REQUIREMENTS:	KRS 15A.371 (7) (9) (10) KRS 15A.372
APPEAL RIGHTS:	KRS 15A.372 (7)
NOTES:	See KRS Chapter 13B

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	KY STATE AGENCY See TAB 6 and 2
CHARGING REQUIREMENTS:	KRS 18A.095 (3) (9)
NOTICE REQUIREMENTS:	KRS 18A.095 (5) (8)
HEARING REQUIREMENTS:	KRS 18A.095 (6)
APPEAL RIGHTS:	18A.100
NOTES:	See KRS Chapter 13B

KENTUCKY DISCIPLINARY PROCEDURES
(SUMMARY INFORMATION)

AGENCY TYPE:	AIRPORT POLICE See TABS 13 and 3
CHARGING REQUIREMENTS:	KRS 183.883 KRS 15.520 (1) (e) KRS 15.520 (4)
NOTICE REQUIREMENTS:	KRS 183.883 KRS 15.520 (1) (h) KRS 15.520 (4)
HEARING REQUIREMENTS:	KRS 183.883 KRS 15.520 (1) (h) KRS 15.520 (4)
APPEAL RIGHTS:	KRS 183.883 KRS 15.520 (2) (3) KRS 15.520 (4)
NOTES:	See Airport Board personnel policies.

TAB 2

KRS CHAPTER 13B

CHAPTER 13B ADMINISTRATIVE HEARINGS

13B.020 Application of chapter -- Exemptions.

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
 - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:

- (c) Justice and Public Safety Cabinet
 - 1. Department of Kentucky State Police
 - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16

- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
 - (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
 - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
 - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

13B.030 Powers of agency head -- Hearing officers.

- (1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended

order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

- (2) (a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:
 - 1. Employ hearing officers;
 - 2. Contract with another agency for hearing officers; or
 - 3. Contract with private attorneys through personal service contract.
- (b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:
 - 1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.
 - 2. The expenses to be paid to the Attorney General's Office shall be calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.
- (3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and the employing agency, with the advice of the division, may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.
- (4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter,

specifically. The division shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Required training shall not exceed eighteen (18) classroom hours for initial training and six (6) classroom hours per year for continuing training. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the division as meeting minimum standards.

13B.050 Notice of administrative hearing.

- (1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing, unless otherwise required by federal law. An agency shall make reasonable effort to schedule a hearing on a date that is convenient to the parties involved.
- (2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service, with the exception of notices of Personnel Board hearings and all board orders which may be served by first-class mail. Service by certified mail shall be complete upon the date on which the agency receives the return receipt or the returned notice.
- (3) The notice required by this section shall be in plain language and shall include:
 - (a) A statement of the date, time, place, and nature of the hearing;
 - (b) The name, official title, and mailing address of the hearing officer;
 - (c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;
 - (d) A statement of the factual basis for the agency action along with a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;
 - (e) A reference to the specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in the hearing;
 - (f) A statement advising the person of his right to legal counsel;
 - (g) A statement of the parties' right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and
 - (h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.
- (4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief

statement of the agency's reasons and any administrative review available to the petitioner.

13B.060 Petition for intervention.

- (1) The hearing officer shall grant a petition for intervention if:
 - (a) The petitioner has a statutory right to initiate the proceeding in which he wishes to intervene; or
 - (b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding.
- (2) The hearing officer may grant intervention after consideration of the following factors and a determination that intervention is in the interests of justice:
 - (a) The nature of the issues;
 - (b) The adequacy of representation of the petitioner's interest which is provided by the existing parties to the proceeding;
 - (c) The ability of the petitioner to present relevant evidence and argument; and
 - (d) The effect of intervention on the agency's ability to implement its statutory mandate.
- (3) Unless otherwise required by federal law, a petition for intervention shall be filed and copies mailed to all parties named in the notice of the hearing, at least fourteen (14) days before the hearing. The parties to the hearing shall have seven (7) days within which to file any response they may have to the petition to intervene. If a petitioner qualifies for intervention under subsection (2) of this section, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:
 - (a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
 - (b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
 - (c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.
- (4) The hearing officer, at least three (3) days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

13B.070 Prehearing conference -- Mediation and informal settlement procedures.

- (1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to explore jurisdictional matters, mediation and settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.
- (2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.
- (3) Except to the extent precluded by another provision of law, mediation or informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies that employ informal settlement procedures shall establish by administrative regulation the specific procedures to be used. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures when the right to an administrative hearing is conferred.

13B.080 Conduct of hearing.

- (1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing officer shall regulate the hearing in conformity with the prehearing order.
- (2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders. The original of all filings shall be mailed to the agency, and copies of any filed item shall be served on all parties and the hearing officer by mail or any other means permitted by law or prescribed by agency administrative regulation. The agency shall when it is received stamp the time and date upon a document.
- (3) The hearing officer may issue subpoenas and discovery orders when requested by a party or on his own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.

- (4) To the extent necessary for the full disclosure of all relevant facts and issues, the hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limited grant of intervention or a prehearing order.
- (5) Any party to an administrative hearing may participate in person or be represented by counsel. In informal proceedings, a party may be represented by other professionals if appropriate and if permitted by the agency by administrative regulation.
- (6) If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in KRS 13B.110.
- (7) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.
- (8) An administrative hearing shall be open to the public unless specifically closed pursuant to a provision of law. If an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed, public access shall be satisfied by giving the public an opportunity, at reasonable times, to hear or inspect the agency's record.

13B.090 Findings of fact -- Evidence -- Recording of hearing -- Burdens of proof.

- (1) In an administrative hearing, findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.
- (2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. The hearing officer may make a recommended order in an administrative hearing submitted in written form if the

hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

- (3) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a list of all witnesses every other party expects to call at the hearing, and the available documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations, or conclusions of the agency staff, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the agency. Conditions for examining and copying agency records, fees to be charged, and other matters pertaining to access to these records shall be governed by KRS 61.870 to 61.884. To the extent required by due process, the hearing officer may order the inspection of any records excluded from the application of KRS 61.870 to 61.884 under KRS 61.878 that relate to an act, transaction, or event that is a subject of the hearing, and may order their inclusion in the record under seal.
- (4) Objections to evidentiary offers may be made by any party and shall be noted in the record.
- (5) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.
- (6) The agency shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the agency, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs. The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884.
- (7) In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. The agency has the burden to show the propriety of a penalty imposed or the removal of a benefit previously granted. The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a

preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.

13B.110 Recommended order.

- (1) Except when a shorter time period is provided by law, the hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement advising parties fully of their exception and appeal rights.
- (2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the agency head, the hearing officer shall show good cause to the agency head, in writing, and based upon substantial proof, that an extension of time is needed.
- (3) If the agency head, after a showing of good cause, grants the hearing officer an extension of time:
 - (a) The extension shall not exceed thirty (30) days from the date the extension as granted;
 - (b) The statement granting the extension shall be included in the record of the hearing; and
 - (c) Notice of the extension shall be sent to all parties.
- (4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.
- (5) The provisions of this section shall not apply in an administrative hearing where the hearing officer conducts the hearing in the presence of the agency head who renders a decision without the recommendation of the hearing officer.

13B.120 Final order.

- (1) In making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

- (2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.
- (3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.
- (4) Except as otherwise required by federal law, the agency head shall render a final order in an administrative hearing within ninety (90) days after:
 - (a) The receipt of the official record of the hearing in which there was no hearing officer submitting a recommended order under KRS 13B.110; or
 - (b) The hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.
- (5) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record in the same manner as provided in KRS 13B.050.
- (6) This section shall not apply to disposition pursuant to KRS 13B.070(3).
- (7) If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as a recommended order and the second agency functions as though it were reviewing a recommended order in accordance with this section.

Related case law decisions:

In the case of *Rapier v. Philpot*, 130 S.W.3d 560 (Ky.,2004.) the Kentucky Supreme Court decided an issue concerning the filing of exceptions under a Chapter 13B administrative proceeding. The Court held that this “is not a prerequisite to obtaining administrative review of a hearing officer's recommended order. Nor is the agency head limited to the issues raised by the exceptions in rendering a final order. The agency head is required to review the entire record and to determine whether there is justification-according to the facts and the applicable law-for adopting the recommended order. If the agency head deviates from the recommended order, it must make separate findings of fact and conclusions of law for any deviation from the recommended order.”

The case involved a state employee who worked for the Tourism Development Cabinet for several years. The Tourism Cabinet dismissed the employee for misconduct related to his work. Because he was a classified employee with status, he could only be dismissed for cause. KRS 18A.095(2). The employee appealed his dismissal as

provided for in KRS 18A.095, and an administrative hearing on his dismissal was “conducted in accordance with KRS Chapter 13B. In his written recommended order, the hearing officer concluded that the employee violated 101 KAR 1:345(1) based on his findings that the employee was guilty of improper work performance, misuse of state property, lying to a supervisor, poor management due to sexual relations with subordinates, and improper use of a state vehicle. The hearing officer recommended that the employee be dismissed.

However, the employee did not file exceptions to the hearing officer's recommended order, which was adopted almost in its entirety by the Personnel Board, including the recommendation that the employee be dismissed. The employee then petitioned the Franklin Circuit Court for judicial review of the Personnel Board's final order pursuant to KRS 13B.140(1). The Franklin Circuit Court dismissed the petition for lack of jurisdiction based on its conclusion that - by not filing exceptions to the hearing officer's report – the employee had failed to exhaust his administrative remedies before seeking judicial review as required by KRS 13B.140(2). The employee appealed the dismissal of his petition to the Court of Appeals. The Court of Appeals held that filing exceptions was not an administrative remedy and, therefore, reversed the trial court. Further, the Court of Appeals held that the Tourism Development Cabinet failed to fully advise the employee of his right to file exceptions as required by law. As a consequence, the Court of Appeals held that the Tourism Development Cabinet was precluded from arguing on remand that the trial court's order should be dismissed because the employee failed to file exceptions to the recommended order. The Supreme Court granted discretionary review, and “upon careful review of the record and applicable law” reversed the Court of Appeals.

Under Chapter 13B, “the filing of exceptions provides the means for preserving and identifying issues for review by the agency head. In turn, filing exceptions is necessary to preserve issues for further judicial review. Under Kentucky law, this rule of preservation precludes judicial review of any part of the recommended order not excepted to *and* adopted in the final order. Thus, when a party fails to file exceptions, the issues the party can raise on judicial review under KRS 13B.140 are limited to those findings and conclusions contained in the agency head's final order that differ from those contained in the hearing officer's recommended order”.

13B.125 Emergency action -- Hearing -- Appeal.

- (1) An agency may take emergency action affecting the legal rights, duties, privileges or immunities of named persons without a hearing only if duly authorized by statute to so act. If an agency takes emergency action, the agency shall conduct an emergency hearing in accordance with the provisions of this section.

- (2) An agency head or an official of an agency duly authorized by law to summarily act in emergency situations may issue an emergency order to stop, prevent, or avoid an immediate danger to the public health, safety, or welfare. The emergency order shall contain findings of fact and conclusions of law upon which the agency bases the emergency order. The agency shall give notice of the emergency order to all affected parties as is practicable under the circumstances, and notice shall be served in the same manner as provided in KRS 13B.050(2). The emergency order is effective when received by the affected party or his representative.
- (3) Any person required to comply with an emergency order issued under subsection (2) of this section may request an emergency hearing to determine the propriety of the order. The agency shall conduct an emergency hearing within ten (10) working days of the request for hearing. The agency shall give all affected parties reasonable notice of the hearing and to the extent practicable shall conduct the hearing in conformity with this chapter. The hearing on the emergency order may be conducted by a hearing officer qualified in accordance with KRS 13B.040. Within five (5) working days of completion of the hearing, the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare.
- (4) The decision rendered under subsection (3) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140.

13B.130 Official record of hearing.

In each administrative hearing, an agency shall keep an official record of the proceedings which shall consist of:

- (1) All notices, pleadings, motions, and intermediate rulings;
- (2) Any prehearing orders;
- (3) Evidence received and considered;
- (4) A statement of matters officially noticed;
- (5) Proffers of proof and objections and rulings thereon;
- (6) Proposed findings, requested orders, and exemptions;
- (7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;
- (8) All requests by the hearing officer for an extension of time, and the response of the agency head;
- (9) Ex parte communications placed upon the record by the hearing officer; and
- (10) A recording or transcript of the proceedings.

Related case law decisions:

In the case of *Urella v. Kentucky Bd. of Medical Licensure*, 939 S.W.2d 869 (Ky., 1997) the Kentucky Supreme Court opined that “It is well settled that failure to raise an issue before an administrative body precludes the assertion of that issue in an action for judicial review, or as an initial matter on discretionary review to this Court”.

The case involved a Physician who “appealed from order of the Board of Medical Licensure, revoking his license to practice medicine”. When the Physician noted that he had surrendered his New York license on his 1993 application for renewal in Kentucky, the Board issued a Show Cause Order/Complaint. The Physician appeared for an administrative due process hearing, with counsel. “The Administrative Law Judge (“ALJ”) rendered Findings of Fact and Conclusions of Law on March 1, 1994, concluding that sufficient grounds existed for the Board to take disciplinary action. After considering exceptions to the ALJ’s report and oral arguments, the Board adopted the ALJ’s Findings of Fact and Conclusions of Law and rendered an order revoking the Physician’s Kentucky medical license.

The Supreme Court reviewed the record, and agreed with the Board that part of the Physician’s argument was not preserved for review. “It was not presented to the ALJ, nor to the Board until ten (10) days after oral arguments. Neither was the issue addressed by the trial court or Court of Appeals”. Therefore, it was precluded from further review.

13B.140 Judicial review of final order.

- (1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency’s enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.
- (2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

- (3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record. If the court requests a transcript of proceedings that have not been transcribed, the cost of the transcription shall be paid by the party initiating the appeal, unless otherwise agreed to by all parties.
- (4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
 - (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
 - (b) A stay is permitted by the agency and granted upon request; or
 - (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

13B.150 Conduct of judicial review.

- (1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.
- (2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
 - (a) In violation of constitutional or statutory provisions;
 - (b) In excess of the statutory authority of the agency;
 - (c) Without support of substantial evidence on the whole record;
 - (d) Arbitrary, capricious, or characterized by abuse of discretion;
 - (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
 - (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
 - (g) Deficient as otherwise provided by law.

Related case law decisions:

In the case of *Dixon v. Clem*, 419 F.Supp.2d 947 (E.D.Ky.,2006) the United States District Court, for the Eastern District of Kentucky, held that a “state circuit judge had authority under Kentucky law to remand a matter to administrative tribunal for limited purpose of reconsidering the appropriate discipline”.

This case involved a certified teacher in the Harlan County School System. The teacher also operated a photographic studio in Cumberland, Kentucky. With school approval, the teacher allowed students to come to his photographic studio to retake their senior yearbook pictures. He also made arrangements for one of the students to return to the studio later that evening for an additional photo session. The student was a 17 year old senior who was a member of one of the teacher's classes.

The student returned to the studio around 6 p.m. that evening, along with another student. At some point, the other student left the studio, leaving the teacher and student alone. The teacher then proceeded to take additional photographs of the student who, in at least some of these photographs, was wearing no clothing from the waist up.

The Superintendent of the Harlan County Schools, issued a letter suspending the teacher pending termination of his contract. It was alleged that the teacher had taken "topless" photos of a student, and that such conduct constituted conduct unbecoming a teacher. Thereafter, a tribunal was convened by the Harlan County School Board to hear the charges against the teacher. The tribunal unanimously found Dixon guilty of conduct unbecoming a teacher and by a 2-1 vote upheld the Superintendent's recommendation he be terminated.

The teacher appealed the decision to the Harlan Circuit Court. After an approximate eight-year delay (the reasons for which are unclear), Judge R. Cletus Maricle ordered a "re-sentencing" of the teacher, finding that the instructions given by the hearing officer were erroneous and that additional mitigating factors should be considered. Judge Maricle determined that, under relevant Kentucky law, the tribunal should have been explicitly informed that in addition to upholding or vacating the teacher's termination, the tribunal could have imposed a lesser penalty even with a finding of conduct unbecoming a teacher. The Court of Appeals of Kentucky agreed, and clarified that "[t]he trial court upheld the finding of conduct unbecoming a teacher but remanded for additional findings that may or may not result in the imposition of a lesser sentence." The appeals court further noted that no additional proof was to be taken.

The teacher argued that it was a violation of due process for the hearing to be conducted without allowing new evidence even if that instruction was contained in the pre-hearing order issued by the circuit court. The Court said however, "in making this argument", the teacher "ignored the clear language of the statute, which allows a hearing to be restricted by limited grant of intervention or a pre-hearing order."

13B.160 Judicial appeal.

Any aggrieved party may appeal any final judgment of the Circuit Court under this chapter to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.

13B.170 Administrative regulations.

- (1) An agency shall have authority to promulgate administrative regulations that are necessary to carry out the provisions of this chapter.
- (2) Nothing in this chapter shall be construed to prohibit an agency from enacting administrative hearing procedures by administrative regulations which are supplemental to the provisions of this chapter.

TAB 3

KRS CHAPTER 15

CHAPTER 15 DEPARTMENT OF LAW

Complaints Against Police Officers

(more commonly known as the Police Officers' Bill of Rights)

15.520 Complaints against police officers; manner of investigation and hearing

(1) In order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for police officers of the local unit of government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers covered by this section:

- (a) Any complaint taken from any individual alleging misconduct on the part of any police officer, as defined herein, shall be taken as follows:
 - 1. If the complaint alleges criminal activity on behalf of a police officer, the allegations may be investigated without a signed, sworn complaint of the individual;
 - 2. If the complaint alleges abuse of official authority or a violation of rules and regulations of the department, an affidavit, signed and sworn to by the complainant, shall be obtained;
 - 3. If a complaint is required to be obtained and the individual, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the department may investigate the allegations, but shall bring charges against the police officer only if the department can independently substantiate the allegations absent the sworn statement of the complainant;
 - 4. Nothing in this section shall preclude a department from investigating and charging an officer both criminally and administratively.
- (b) No threats, promises, or coercions shall be used at any time against any police officer while he or she is a suspect in a criminal or departmental matter. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons for the suspension;
- (c) No police officer shall be subjected to interrogation in a departmental matter involving alleged misconduct on his or her part, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The interrogation shall be conducted while the officer is on duty. The police officer may be required to submit a written report of the alleged incident if the request is made by the department no later than the end of the subject officer's next tour of duty after the tour of duty during which the department initially was made aware of the charges;

- (d) If a police officer is under arrest, or likely to be arrested, or a suspect in any criminal investigation, he shall be afforded the same constitutional due process rights that are accorded to any civilian, including, but not limited to, the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences. Nothing in this section shall prevent the suspension with or without pay or reassignment of the police officer pending disposition of the charges;
- (e) Any charge involving violation of any local unit of government rule or regulation shall be made in writing with sufficient specificity so as to fully inform the police officer of the nature and circumstances of the alleged violation in order that he may be able to properly defend himself. The charge shall be served on the police officer in writing;
- (f) When a police officer has been charged with a violation of departmental rules or regulations, no public statements shall be made concerning the alleged violation by any person or persons of the local unit of government or the police officer so charged, until final disposition of the charges;
- (g) No police officer as a condition of continued employment by the local unit of government shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature; and
- (h) When a hearing is to be conducted by any appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any police officer charged:
 1. The accused police officer shall have been given at least seventy-two (72) hours notice of any hearing;
 2. Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the police officer no less than seventy-two (72) hours prior to the time of any hearing;
 3. If any hearing is based upon a complaint of an individual, the individual shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested;
 4. If the return receipt has been returned unsigned, or the individual does not appear, except where due to circumstances beyond his control he cannot appear, at the time and place of the hearing, any charge made by that individual shall not be considered by the hearing authority and shall be dismissed with prejudice;
 5. The accused police officer shall have the right and opportunity to obtain and have counsel present, and to be represented by the counsel;
 6. The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused police officer or the charging party. If

any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a rule. The Circuit Court, or any judge thereof, may on the application compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court;

7. The accused police officer shall be allowed to have presented, witnesses and any documentary evidence the police officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;
 8. Any police officer suspended with or without pay who is not given a hearing as provided by this section within sixty (60) days of any charge being filed, the charge then shall be dismissed with prejudice and not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits; and
 9. The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks weight or credibility and whether the officer has been materially prejudiced.
- (2) Any police officer who shall be found guilty by any hearing authority of any charge, may bring an action in the Circuit Court in the county in which the local unit of government may be located to contest the action of that hearing authority, and the action shall be tried as an original action by the court.
- (3) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to appeal to the Court of Appeals shall be the same as in any civil action. As the provisions of this section relate to a minimum system of professional conduct, nothing herein shall be construed as limiting or in any way affecting any rights previously afforded to police officers of the Commonwealth by statute, ordinance, or working agreement.
- (4) The provisions of this section shall apply only to police officers of local units of government who receive funds pursuant to KRS 15.410 through 15.992.

Related case law decisions:

In *McCloud v. Whitt*, 639 S.W.2d 375 (Ky.App.,1982), the Kentucky Court of Appeals reviewed the Greenup Circuit Court in a declaratory judgment action that concluded that

the mayor of Worthington, Kentucky, a city of the fifth class, could not remove the city's chief of police (Whitt) without first holding a due process hearing.

The Court said "It is clear from a comparison of the current statutes with their predecessors that in enacting KRS chapter 83A in 1980 the Legislature intended to place a far greater degree of authority in mayors of fifth-class cities with respect to the appointment and removal of non-elective city officers than had previously been the case".

"KRS 15.520 has no application to the removal of Police Chief Whitt. That statute was enacted "[i]n order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth" by creating standards of conduct "to deal fairly and set administrative due process rights for police officers ... and at the same time providing a means of redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers[.]" To expand the application of the requirements of this statute by judicial decision would be an impermissible intrusion into the prerogatives of the legislative branch. Chief Whitt's removal was not predicated upon any complaint of professional misconduct, KRS 15.520(1)(a), or upon any charge involving violation of any local unit of government rule or regulation, KRS 15.520(1)(e), but resulted from action by the mayor under the discretionary power given him by KRS 82.080(2)".

In Shelton v. Brown, 71 F.Supp.2d 708 (W.D.Ky.,1998), the United States District Court for the Western District of Kentucky reviewed the case of Shelton, who was the Chief of Police of the City of Albany until he was fired by the Mayor. Shelton claims that his termination deprived him of his constitutional liberty and property interests in violation of substantive and procedural due process requirements of the Fourteenth Amendment to the United States Constitution and brought a 42. U.S.C. §1983 action against the Defendants, City of Albany, and its Mayor, James A. Brown,

"Shelton complains that he was terminated without being given a pre-disciplinary hearing as required in Part III Section D(3)(d) of the City's Policies and Procedures Manual. Shelton also argues that he was entitled to due process rights, as a police officer, under KRS 15.520 and KRS 95.765. The Defendants argue that Shelton was an employee terminable at-will under Kentucky law; that KRS 15.520 and KRS 95.765 does not apply to this case; and, that Shelton was given an opportunity for a pre-disciplinary hearing, but that he failed to attend those meetings.

Shelton "argues that Defendants failed to comply with KRS 95.765 when the Mayor terminated his employment. KRS 95.765 provides that police officers can only be discharged for cause: "No member of the police or fire departments shall be removed from the department or reduced in grade upon any reason except inefficiency, misconduct, insubordination or violation of law, or violation of the rules adopted for the departments." KRS 95.765(1). In order for KRS 95.765 to apply, the City must have adopted the civil service provisions".

Shelton further “argues that McCloud (discussed previously) is not controlling since Shelton was charged with misconduct once before and KRS 15.520 does not require that disciplinary proceedings emanate from a citizen's complaint”. However, the Court found “that there is nothing to suggest that Shelton's removal was predicated on any complaint of professional misconduct, KRS 15.520(1)(a), or upon any charge involving violation of any government rule or regulation, KRS 15.520(1)(e). Instead, the evidence indicates that his removal was the result of the action of the Mayor exercising the discretionary authority purportedly given him under KRS 83A.080(2). As a result, KRS 15.520 provides Plaintiff no property interest in his continued employment as Chief of Police”.

Shelton made an additional argument “that even absent a statute or ordinance protecting the terms of his employment, his position was protected by contract rendering his employment not terminable at the will of the Mayor”. Reviewing case law, the Court stated “[O]rdinarily an employer may discharge his at-will employee for good cause, for no cause, or for a cause that some might view as morally indefensible...However, the parties to an employment contract can make the employment relationship terminable only for cause ‘by clearly stating their intentions to do so...’” According to Plaintiff (Shelton), the City's Policies and Procedures Manual, Part III, Section D(3), requires a pre-disciplinary hearing to be offered an employee who is facing dismissal”.

The Defendants argued “that Shelton was afforded the pre-disciplinary hearing provided by the Policies and Procedure Manual”. However, the Court “rejects the notion that Shelton was given the opportunity for such a hearing but that he failed to take advantage of it. The evidence merely shows that Shelton missed two meetings, neither of which were identified as disciplinary meetings. He was not advised that he might be discharged as a result of those meetings, nor was he advised to seek legal representation or gather witnesses on his own behalf. It is clear that the City failed to give Shelton the process afforded him under the Policies and Procedures Manual”.

The final ruling was that Shelton was “an at-will employee”... therefore, he has no constitutionally protected property interest in his employment”.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to police as officers and their police departments, summarized below:

OAG 81-48 “A police department must be established by ordinance and not by legislative order. Except for the wage and hour law, police are officers and not employees. Police officers are entitled to a hearing before dismissal”.

Related case law decisions:

In *McDaniel v. Walp*, 747 S.W.2d 613 (Ky.App.,1987), the Kentucky Court of Appeals reviewed a case involving the manner of a complaint against a police officer. James L. Walp, was an officer employed by the Jefferson County Police Department. "Walp was dismissed at the instance of then-Chief E.G. Helm, Jr., for failing to properly return funds recovered from a theft of Toohey's Auto Parts, a business in Bullitt County".

"Toohey made an oral complaint to the police department. Private citizens involved in discovery of the theft proceeds filed written statements as to the circumstances surrounding the discovery and delivery of same to Walp. Chief Helm initiated an investigation. After a proper and full-blown hearing by the Merit Board, in which a representative of Toohey's testified under oath, Walp's dismissal was affirmed".

In its ruling, the Court said "We do not believe a fair reading of KRS 78.445 and 15.520 requires that disciplinary proceedings must necessarily emanate from a citizen's sworn complaint. It is true that disciplinary action may rest upon the sworn allegation of a complaining citizen. This is not, however, to preclude disciplinary action by departmental authority based upon initiation from within and upon any source of information".

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued an opinion related to complaints and civil service, summarized below:

OAG 83-231 "The mayor may remove any police officer at will, unless the officer is under civil service or a complaint has been filed under KRS 15.520".

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to the notice requirements, summarized below:

OAG 83-114 "Where a city and police department participate in the Kentucky Law Enforcement Foundation Program, a city's proposed policy of documenting employee's work that would include charging police with professional misconduct or with violating municipal rules would require a city to follow notice and hearing procedure of KRS 15.520".

OAG 81-134 “Notice to a police officer of charges and the time of a hearing is governed by KRS 15.520 instead of KRS 95.450. KRS 446.030 governs the computations of time with respect to notice and hearing”.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to suspension issues, summarized below:

OAG 96-3 “A local government may suspend an employee with pay without offending Ky Const §3 and §171; the local government should have a uniformly applied written policy that provides that such suspension will be utilized only where justified from a public policy perspective, that the term of the suspension may not exceed such time as is reasonably required for appropriate investigation and resolution of the circumstances justifying the suspension, and that within a reasonable time following imposition of the suspension, the employee must either be returned to active service, or the employee's pay lawfully terminated”.

OAG 84-2 “Police officer may be suspended for misconduct, without pay, up to a maximum of sixty days prior to a hearing under KRS 15.520, which supersedes the three-day period under KRS 95.450(5)”.

Related case law decisions:

In *Howard v. City of Independence*, 199 S.W 3d 741 (Ky.App., 2005), the Kentucky Court of Appeals heard the case of E. William Howard who appeals from the judgment of the Kenton Circuit Court upholding the decision of the City of Independence terminating his employment as a Police Captain.

Howard raised a couple of hearing issues, which included that: “1) an uninterested, unbiased attorney, rather than the Mayor of Independence, should have presided over Howard's termination hearing; 2) Howard's request for a public hearing was wrongfully denied”; In addition, Howard argued that “the complaints are arbitrary because they are too trivial to support termination, and Howard was not afforded progressive discipline as required by the City Personnel Policy”.

“KRS 83A.080(1) contemplates that non-elected city offices will be created by ordinance. The only non-elected city officers listed in the Independence Code of Ordinances § 31.35(D) for purposes of KRS 83A.080 are the City Clerk, City Treasurer, City Attorney, Building Inspector, Zoning Administrator and City Administrator. That being so, police officers are not non-elected city officers for purposes of § 31.35(C), and Howard was not entitled to a hearing before an attorney appointed by the City Council. The Mayor of Independence, as the “appointing authority”, was authorized to conduct the hearing, as the circuit court correctly found. [KRS 83A.130(9) KRS 15.520(1)(h)]”.

Concerning his claim on his request for a public hearing, the Court opined “We believe that the coverage of the Open Meetings Law is broad enough to include the action taken here. However, we can find no indication in this record that Howard followed the procedures provided in KRS 61.846 and .848 to obtain the relief provided by law. Having not taken the required steps, he is not entitled to any relief. Further and of equal importance, the record is clear that Howard was afforded ample due process pursuant to KRS 15.520...Even if we were convinced that the City of Independence did not substantially comply with the provisions of KRS 61.810, the action of the City would not be void but, rather, voidable in our discretion. KRS 61.848(5)”.

“Howard argues that the circuit court failed to review his claim of “improper charging” by which he asserts that no legitimate charges were stated. The gist of the argument is that the charges against Howard were frivolous and do not state a sufficient or legal cause for removal from office. The charging document listed each of the specifications filed against Howard and referred to the sections and subsections of the City of Independence Personnel Policies Manual allegedly violated in each specification. Generally stated, Howard was charged under six (6) separate specifications with being an inefficient and/or ineffective, and insubordinate employee. The facts which the City claimed supported the specifications were set out in detail and were proven at the hearing”.

“KRS 15.520 limits a mayor's ability to discharge a police officer at will if grounds set out in the statute apply. It is KRS 15.520 which provides due process protections for police officers in disciplinary proceedings. Conversely, but for the requirements of the statute, the employment of police officers is terminable at will by the appointing authority for any cause or for no cause”.

“Our review of the proceedings below shows that Howard was afforded due process. He was represented by counsel at all stages of the proceedings. The entire hearing was recorded and transcribed. Howard's counsel examined and cross-examined witnesses. Many of his motions and objections were sustained at the hearing. Upon a complete review of the record, we find that Howard received a full and fair due process hearing”.

As to his argument that “the complaints against him are so trivial that they are arbitrary and do not warrant termination and that the City did not afford Howard progressive discipline as the City's personnel policy requires...The trial court found that the evidence shows that Howard was not abruptly discharged and that he was counseled after the incidents for which he was charged”.

In City of Munfordville v. Sheldon, 977 S.W.2d 497 (Ky. 1998), the Kentucky Supreme Court reviewed another case involving a hearing issue by Robert Sheldon, who “was employed as a police officer in the City of Munfordville, Kentucky, a fifth-class city. Shortly thereafter, Sheldon became Chief of Police. In 1987, Sheldon arrested Charlie Hays, for DUI. At the time of the arrest, Hays was an ordinary citizen. Hays later was elected to the Munfordville City Council (in 1988), was appointed to fill the unexpired

term of the resigning mayor (in 1992), and eventually was elected as Mayor of Munfordville (in 1993). The day after he was elected as Mayor, during a special meeting of the city council, Hays summarily fired Sheldon, giving no reasons for the dismissal". "Sheldon filed suit against the City and Hays, alleging he was entitled to the protection of KRS 15.520 et seq., the so-called "Police Officers' Bill of Rights." He further alleged his dismissal amounted to a retaliatory discharge for his prior DUI arrest of Hays".

According to the record before the Court, "Tommy Cummings, a local business owner in Munfordville, complained to Hays about the manner in which Sheldon investigated a robbery of Cummings' business. Mayor Hays requested Cummings to file a written complaint to the council accusing Sheldon of misconduct in the investigation. In his deposition, Mayor Hays admitted that this written complaint was in his possession at the special meeting at which Sheldon was fired. Hays further admitted his decision to fire Sheldon was based on this complaint, and on other "deficiencies" in Sheldon's performance as police chief".

The Kentucky Court of Appeals held that "the trial court's summary judgment in favor of Sheldon, ruling that he was improperly terminated and that he continues to occupy the position of Chief of Police for the City of Munfordville" was adopted by the Court. "Hays argues that by so holding, we render meaningless the statute (KRS 83A.080(2)) which gives the mayor discretionary power to fire employees at will. We disagree. Rather, our holding merely forbids a mayor or other local executive authority from receiving a citizen's complaint against a police officer, then firing the officer based on that complaint, without ever affording the officer a right to publicly defend against the complaint as required by KRS 15.520. To hold otherwise would encourage the mayor to avoid the time and expense of providing every officer the due-process hearing to which he or she is entitled upon the filing of a citizen complaint, by simply couching the decision to fire in the guise of a simple act of discretion. Nothing in our holding prohibits a mayor from discharging an officer at his or her discretion, so long as the reason behind the discharge does not trigger the hearing requirement of KRS 15.520, or fall into one of the exceptions to the at-will employment doctrine".

The Court also adopted the Court of Appeals decision that held "the sixty-day hearing requirement set forth in KRS 15.520(1)(h)(8)" does apply to this case. "It was that statute, the Court of Appeals reasoned, which would have required Mayor Hays to have held a hearing on the citizen complaint within sixty days. Hays' failure to hold a hearing requires that Sheldon be reinstated and the citizen complaint against him be discharged with prejudice".

In Brown v. Jefferson County Police Merit Bd., 751 S.W.2d 23 (Ky. 1988), the Kentucky Supreme Court heard a case of a probationary police officer. "Brown had completed classroom instruction and field training and had been sworn in as a Jefferson County Police Officer with the rank of Grade C Patrolman on October 1, 1984. On August 18, 1985, she was involved in an off duty altercation wherein she struck a neighbor with a shovel, allegedly in self-defense. She was notified by the Chief of Police

that she was suspended pending investigation of the incident, and then, on September 9, 1985, notified of termination from her employment for “the good of the department.”

“Brown filed a notice of her intention to appeal from her termination with the Merit Board. The Merit Board dismissed her appeal *summarily*, without considering the merits, on grounds that under the “Rules and Regulations” of the Merit Board hers was a probationary appointment subject to removal during probation “by the Chief for the efficiency of the service,” and under Merit Board Regulation 8.4(3):

“An employee so removed during any original probation period shall be dismissed. This action is not appealable by the employee.”

“Brown then filed an original action in Jefferson Circuit Court designated a “statutory appeal pursuant to KRS 15.520(2) and KRS 78.455(2),” demanding that her right to a hearing be recognized under KRS Chapter 78, which provides for a county police force merit system in Sections .400 to .480, and demanding reinstatement and employment with full back pay and benefits”.

“The statutory sections relied upon by the Merit Board and the Department for authority to promulgate the rules providing for a summary discharge of a police officer during the probationary period specify that such rules are for personnel “covered by” the system. The system itself compels a Board hearing so conducted as to provide administrative due process as spelled out in the statutes. It is an oxymoron to argue that there is a further statutory grant of authority to the Merit Board to create a class of employees not covered by the system”.

“The power to establish regulations establishing qualifications for original appointments, and to establish training before such appointment, gives no power to suspend the rights statutorily created for the protection of those who, having been appointed, are within the system. It is not our function to decide whether it would be good policy for the statute to permit a probationary period during which a police officer would continue to be subject to summary discharge. Such policy considerations are exclusively the prerogative of the legislature. Our function is limited to deciding whether the administrative regulations are in conflict with the statute or in excess of the statutory mandate”.

“KRS 78.425 provides in subsection (1) that “[a]ll police officers of whatever rank and title” are included in the merit system, and in subsection (3) that all personnel so covered “shall be deemed to be permanent employees subject to their ability to satisfactorily perform their respective duties and further subject to their good behavior.” This statute does not permit the existence of two classes of employees for purposes of the procedural protections conferred in KRS 78.400 to 78.460”.

“The last argument which needs to be addressed is Brown's claim to automatic reinstatement with full back pay under the last sentence of KRS 78.460, quoted above,

and KRS 15.520(1)(h)(7), which includes within the “administrative due process rights” granted to police officers of local units of government”, The Court ruled that Brown was entitled to a remand for a trial on the merits which was erroneously denied her, but she is not entitled to automatic reinstatement with full back pay.

In McGlone v. Fannin, 98 F.Supp.2d 801 (E.D.Ky. 2000), the United States District Court for the Eastern District of Kentucky heard a discharge case involving McGlone, who was hired as a police officer for the city of Prestonsburg in October, 1998. All parties agree, that while (McGlone) worked forty hours a week during November and December of 1998, Plaintiff was still officially listed as a “part time” employee. McGlone did not receive any vacation time, sick leave, or retirement benefits.

“On January 8, 1999, Plaintiff (McGlone) arrested a woman on charges which included reckless driving. The woman, a friend of the Mayor of Prestonsburg, complained about this arrest. The Mayor met with the City Council's personnel committee to discuss the matter. While no formal action was taken, Plaintiff was moved from night shifts to day shifts. While working day shifts, which primarily required Plaintiff to write tickets, Plaintiff began to make disparaging remarks about the Mayor. Plaintiff's supervisor at the police station told Plaintiff to refrain from such remarks”.

“On February 8, 1999, Police Chief Conley wrote a letter to Mayor Fannin, recommending Plaintiff's termination. The letter indicated that Conley had observed Plaintiff at his home, two miles outside the city limits, at a time when Plaintiff was supposed to be on duty within the city limits. Plaintiff was also cited as violating “call in” procedures, and for failure to attend Fire Range Qualification training. On March 10, 2000, the City Council personnel committee met to discuss Conley's letter. A motion was passed to terminate Plaintiff. Plaintiff was terminated on March 15, 2000”.

The Court looked at the reasons for McGlone's termination. “If Plaintiff was discharged for the negative comments he made regarding the Mayor, the Plaintiff claims said discharge was illegal and in violation of his First Amendment rights. If Plaintiff was discharged due to a citizen complaint, Plaintiff argues he was entitled to a hearing under KRS 15.520. If Plaintiff was discharged due to inefficiency or misconduct, Plaintiff contends that he was entitled to rights promulgated under KRS 95.765”.

“Plaintiff argues that KRS 15.520 protects him from discharge based on a citizen's complaint. Once the City Counsel had grounds to discharge him, Plaintiff argues that he was entitled to a hearing. Unfortunately, KRS 15.520(4) states that the hearing rights outlined in the statute “apply only to police officers of local units of government who receive funds pursuant to KRS 15.410 through 15.992.” KRS 15.520(4). The statute clearly indicates that the rights vest only in “officers... who receive funds”. Plaintiff was not receiving funds under this program. In fact, Plaintiff was ineligible to receive funds under this program as he had not yet completed the 400 hours of training required to receive funding under the “Law Enforcement Foundation Program

Fund.” KRS 15.440(4). Regardless of Plaintiff’s full time or part time status, he is not eligible for the mandatory hearing procedures created under KRS 15.520”.

“Plaintiff is not eligible for the hearing requirements promulgated under KRS 95.765. In order for a city to be required to comply with the due process requirements outlined in KRS 95.765, the city must have adopted a civil service system. The affidavit of the Mayor of Prestonsburg clearly indicates that no such system is in place in Prestonsburg, therefore, the rights outlined in KRS 95.765 are not available to the Plaintiff”.

“Plaintiff does not have a Fourteenth Amendment claim under Prestonsburg’s Personnel Policies and Procedures Manual. This document clearly states that “unless otherwise provided in writing, employment should be at will; therefore, either party may terminate the relationship at any time and for any lawful reason...As Plaintiff has not shown a writing implying otherwise, he was an employee at will and could be fired for cause, or without cause”.

In City of Louisville By and Through Kuster v. Milligan, 798 S.W.2d 454 (Ky. 1990), the Kentucky Supreme Court addressed judicial review concerning the issue of whether K.R.S. 90.190(2) provides authority to the civil service board to modify a disciplinary penalty imposed by the appointing authority.

Milligan was terminated as a police detective for wrongful use of his weapon. He had been employed in the Louisville police division for nineteen years when, while on leave because of a leg injury, he fired shots at an individual he was trying to arrest outside his personal residence. The suspect had broken into Milligan’s home the previous day and had assaulted a person living there for which a warrant had been issued. When the suspect returned for a second time to Milligan’s home, Milligan attempted to arrest him and in the ensuing scuffle, was struck by a stick and knocked off the porch. Milligan informed the fleeing suspect that he was under arrest before firing two shots at the suspect’s legs. The suspect jumped into a waiting automobile and Milligan fired four rounds into the moving vehicle with one shot striking the driver in the ear. Milligan’s employment was terminated by the safety director for violating police regulations”.

“Milligan appealed his dismissal to the civil service board. After an extended evidentiary hearing, the Board found that the police officer’s conduct was in violation of departmental rules but because of his good employment record of nineteen years, concluded that dismissal was not justified and fixed his penalty at a 30-day suspension which is the maximum penalty allowed short of termination”.

“K.R.S. 90.190(1) provides that an employee may appeal to the Board any dismissal and entitles that employee to a public hearing. K.R.S. 90.190(2) states in part that the Board has the authority to investigate and determine the justification for all dismissals. The Court of Appeals determined that the key issue centered on the legislative intent and interpretation of the meaning of the word “justification.” Justification is a noun

meaning to justify or to prove to be right, just or reasonable; to show to have a sufficient reason”.

“The Board is the final administrative reviewing authority of disciplinary actions. It is the duty of the Board to determine from the evidence whether there has been misconduct and also to ascertain whether the disciplinary action was justified under all the facts and circumstances. K.R.S. 90.190(2) does not limit the authority of the Board to modify the penalty against a classified employee. The Board determined that the discharge of Milligan was too severe for the rule infraction involved under all the circumstances and therefore not justified”.

“K.R.S. 90.190(2) expressly grants the Board the power to investigate and determine the justification for disciplinary actions. The Board specifically found that the degree of discipline was not justified under all the facts and circumstances. The power to modify discipline is reasonably necessary and appropriate to effect the express powers of the civil service board. To hold otherwise would be to frustrate the purpose of the civil service system”.

The Court concluded “It is our holding that the Louisville Civil Service Board has inherent authority pursuant to the statute to modify disciplinary actions which are found to be unjustified based on the facts and circumstances. The Court of Appeals was correct in finding that the Board is the final local government authority for determining appropriate discipline and is authorized to modify discipline when it finds it to be unjustified”.

In Stallins v. City of Madisonville, 707 S.W.2d 349 (Ky.App.,1986), the Kentucky Court of Appeals decided the case of police officer Douglas L. Stallins, who pursuant to KRS 15.520(2), brought an action in the Hopkins Circuit Court contesting the action of the City Council of the City of Madisonville, finding him guilty after a hearing of a violation of the General Rules and Regulations of that city's police department, and ordering his removal and dismissal on July 10, 1984. The action also contested the City Council's action on July 2, 1984, after a hearing, disallowing his written grievance wherein he protested the police chief's failure to grant his requests for additional training and for promotion and for the chief's suspending and reprimanding him on several occasions.

The Court first addressed that “The function of the hearing body in instances of charges against police officers is to make two determinations: first, whether the officer has violated the rules and regulations of the department and if so, second, it must exercise its discretion in imposing a penalty. The first is subject to judicial review; the second is not. Sound public policy requires that the matter of punishment and discipline of a police officer be left to the city”.

The Court of Appeals noted that the trial court “in its review is to consider both the transcript and the additional testimony and it is limited to a determination of whether the administrative body acted arbitrarily in deciding whether the employee violated the rules

and regulations of the police department...however, the review does not include the punishment meted”.

In City of Madisonville v. Sisk, 783 S.W.2d 885, (Ky.App.,1990), the Kentucky Court of Appeals examined a case based upon the trial court’s finding that the authority to terminate appellee’s (Sisk) employment rested in the Madisonville City Council rather than in the city’s mayor.

Since Madisonville, a fourth-class city, participates in the law enforcement foundation program fund pursuant to KRS 15.410 *et seq.*, it is required to adhere to certain standards and procedures for the investigation of complaints filed against police officers as set out in KRS 15.520. See KRS 15.520(4). In November 1987 appellee, a Madisonville city police officer, was charged with neglect of duty, insubordination, disobedience, and unauthorized absence from duty stemming from an incident which occurred several days earlier. Although appellee requested a hearing before the city council, that request was denied and the hearing was conducted before the Madisonville mayor.

In a city such as Madisonville, the mayor constitutes the city’s executive authority and the city council constitutes its legislative body. KRS 83A.130(2) and (11). Further, KRS 83A.130(9) states in pertinent part that:

The mayor shall be the appointing authority with power to appoint and remove all city employees, including police officers, except as tenure and terms of employment are protected by statute, ordinance or contract and except for employees of the council. (Emphasis added.)”

“KRS 15.520, however, specifically sets out the standards and administrative due process rights which apply to any hearing conducted by a statutorily appointed authority or body regarding any complaint of police misconduct in a city such as Madisonville. Further, KRS 95.765 addresses the identity of such statutorily appointed authorities...”

“In cases where the *mayor* or chief has probable cause to believe that a member of the police or fire department has been guilty of any conduct justifying removal or punishment, he *may suspend said member from duty, or from both pay and duty, pending said trial, and said member shall not be placed on duty or allowed pay thereafter until the charges are heard by the legislative body. The said body shall fix punishment No member of the police or fire department except as provided in KRS 95.761 to 95.785 shall be reprimanded, removed, suspended, or dismissed from the department until written charges have been made, or preferred against him, and a trial had as herein provided.* (Emphasis added.)”

“KRS 83A.080(2) and 83A.130(9) permit a local executive authority such as a mayor to terminate the employment of a nonelected city official such as a police officer only if

there is no statute which provides otherwise. It is clear to us that KRS 95.765 is such a statute, and that it requires that a disciplinary hearing be conducted before the legislative body rather than before the mayor. It follows, therefore, that the trial court did not err by concluding that appellee (Sisk) was entitled to a hearing before the Madisonville City Council prior to any discharge”.

In *Marco v. University of Kentucky*, WL 2520182, (Ky.App.,2006), a Not Reported case, the Kentucky Court of Appeals addressed where the Police Officer Bill of Rights was held to not be applicable. “On January 18, 2005, in the early morning hours, Officer Marco of the University of Kentucky Police Department (UKPD) initiated a traffic stop after suspecting the driver of being under the influence. The male driver was arrested for Driving Under the Influence (DUI), and three twenty-year-old female passengers were arrested for Alcohol Intoxication. Marco requested a “paddy wagon” to transport the three females to the Lexington-Fayette County Detention Center. Officer Eugenia Wilson of UKPD arrived shortly thereafter in a police van. Officer Marco then placed the hand-cuffed female arrestees into the back of the van, which Officer Wilson drove. Officer Marco drove separately in her cruiser in order to transport the driver charged with DUI”.

“Unbeknownst to Wilson, the back door of the paddy wagon was improperly secured, and had been swinging back and forth throughout the ride to the detention center. Abigail Houk, one of the female arrestees, was jolted to the floor of the van during the ride and began sliding out the back as the van accelerated forward. Though they were handcuffed, Houk's friends managed to seize her legs and prevent her from falling out. The record indicates that as much as half of Houk's body was outside the van during the ride. To exacerbate the situation, statements from all three female arrestees alleged that various police officers, including Officer Marco, were laughing at the near-tragedy upon becoming aware of the incident”.

“Lt. John Costigan of UKPD was notified of the incident shortly thereafter by a jail employee and by an officer from the Lexington Police Department. An internal investigation was initiated. On January 19, 2005, Officer Marco was instructed to meet with the Acting Director of Public Safety, UKPD. The next day, January 20, 2005, the Director sent a letter to Marco detailing her violation of UKPD procedures and establishing her punishment: a three day suspension and ninety days probation”.

“Without pursuing the matter further via the University’s “Grievance” procedures, Marco filed a declaratory judgment action in Fayette Circuit Court on April 27, 2005. Marco alleged that Kentucky Revised Statute (KRS) 15.520 applied and that she was denied her rights under those provisions. The Circuit Court held that KRS 15.520 was inapplicable to the investigation involving Marco. Summary judgment was entered on August 17, 2005”.

“We are not persuaded that the Police Officer Bill of Rights is applicable to the circumstances of this case. The investigation in this case resulted from a report by

personnel at the Fayette County Detention Center to Lt. Costigan. An internal investigation ensued. The investigation was not initiated upon the basis of a “complaint” as contemplated by KRS 15.520... Upon this, minimal disciplinary sanctions were imposed upon Marco and Wilson”.

“KRS 15.520 applies to investigations resulting from a “complaint” against a police officer. The section is captioned “Complaints against police officers; manner of investigation and hearing.” While the female arrestees did later provide statements concerning the incident, they filed no complaint, and the initial investigation resulted from a report of the incident by Fayette County Detention Center personnel. Moreover, as Marco and Wilson admitted to the essential facts, an evidentiary hearing would have served no purpose”.

The Court finally concluded that “even if the Bill of Rights could be construed to apply to the facts of this case, upon Marco’s own admissions, we discern no prejudice as minimal disciplinary penalties were imposed in relation to the breach of policy”.

TAB 4

KRS CHAPTER 15A

CHAPTER 15A. JUSTICE AND PUBLIC SAFETY CABINET

15A.370 Department of Kentucky Vehicle Enforcement -- Employees may be commissioned as peace officers -- Enforcement powers -- Divisions in department.

- (1) The Department of Kentucky Vehicle Enforcement is hereby created as a separate department within the Justice and Public Safety Cabinet.
- (2) The department shall be headed by a commissioner who shall report directly to the secretary of the Justice and Public Safety Cabinet. The commissioner may commission employees of the department as peace officers for the purpose of enforcing the provisions of KRS Chapter 281. The Department of Kentucky Vehicle Enforcement shall also have the authority to enforce all other state laws and administrative regulations as directed by the Governor or secretary of the Justice and Public Safety Cabinet. Peace officers of the department shall also enforce vehicle licensure and motor vehicle operator, traffic, and criminal law violations on a highway. Additional jurisdiction may be established by agreement with the chief police of the municipality or sheriff of the county or the appropriate law enforcement agency in which such highway is located, dependent upon the jurisdiction involved.
- (3) Officers of the department may exercise their powers away from the locations described in subsection (2) of this section only upon the following conditions:
 - (a) When in hot pursuit of an actual or suspected violator of the law;
 - (b) When authorized to do so pursuant to the agreement authorized by subsection (2) of this section;
 - (c) When requested to act by the chief of police of the city or county in which the highway is located;
 - (d) When requested to act by the sheriff of the county in which the highway is located;
 - (e) When requested to act by the commissioner of the Department of Kentucky State Police;
 - (f) When requested to act by the authorized delegates of those persons or agencies listed in paragraph (c), (d), or (e) of this subsection;
 - (g) When requested to assist a state, county, or municipal police officer, sheriff, or other peace officer in the performance of his lawful duties, or if it appears that the peace officer is unable to request emergency assistance and the circumstances observed by the officer reasonably indicate that emergency assistance is appropriate;
 - (h) When necessary to protect the life or property of the officer or another person from imminent threat of physical harm; or
 - (i) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.

- (4) Officers commissioned by the department shall have, in addition to the other powers enumerated in this section, the power to conduct investigations anywhere in this Commonwealth, provided such investigation relates to criminal offenses or violations which occurred on a highway. Where desirable and at the discretion of the commissioner or his or her designee, the department may coordinate these investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.
- (5) An officer of the department that renders any assistance pursuant to subsection (3) of this section shall be considered performing regular employment for the purpose of compensation, pension, workers' compensation, and other rights and benefits to which the officer may be entitled as incident to regular employment.
- (6) Nothing in this section shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Department of Kentucky State Police, a sheriff, a constable, or other peace officer on a highway in their jurisdiction or otherwise.
- (7) The primary responsibility of the department shall be the enforcement of federal, state, and local motor carrier and for-hire carrier laws, administrative regulations, and ordinances.
- (8) The Department of Kentucky Vehicle Enforcement shall have the following divisions:
 - (a) Division of Field Operations East;
 - (b) Division of Field Operations West;
 - (c) Division of Special Operations; and
 - (d) Division of Administrative Services.

15A.371 Charges against commissioned officers -- Procedure -- Hearing.

- (1) For the purposes of this section, the term "commissioner" means the commissioner of the Department of Kentucky Vehicle Enforcement.
- (2) An employee commissioned pursuant to the provisions of KRS 15A.370 shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Any person may prefer charges against a commissioned employee.
- (4) A charge shall be:
 - (a) In writing;
 - (b) Filed with the office of the commissioner;
 - (c) Signed by the person making the complaint; and
 - (d) Set out with clarity and distinction.

- (5) (a) The commissioner shall review the charges.
(b) If the commissioner determines that there is probable cause, he shall file charges against a commissioned employee whom he believes is guilty of misconduct that justifies his removal or discipline.
- (6) Within five (5) days of the filing of the charges, the commissioner shall:
 - (a) Personally deliver a copy of the charges to the commissioned employee; or
 - (b) Send a copy of the charges to the commissioned employee by certified mail, return receipt requested.
- (7) Within five (5) days of receipt of the charges, the commissioned employee may:
 - (a) Demand an administrative hearing; or
 - (b) Admit the truth of the charges in whole or in part.
- (8) If the commissioned employee admits the truthfulness of the charges, the commissioner shall dismiss, demote, suspend, or otherwise penalize the employee as warranted by the seriousness of the charges.
- (9) If the commissioned employee denies the charges and demands a hearing within the time specified in subsection (7) of this section, he shall notify the commissioner in writing.
- (10) Upon receipt of the demand for hearing, the commissioner shall arrange for an administrative hearing before a trial board to be constituted as provided in KRS 15A.372. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (11) (a) If the commissioner has probable cause to believe that a commissioned employee is guilty of misconduct, he may immediately suspend the employee from duty, or from both pay and duty, pending trial.
(b) If an employee is suspended, he shall not be returned to duty or be paid until a final order is rendered by the trial board.
- (12) After hearing the charges, the trial board shall fix the punishment of a commissioned employee found guilty of one (1) or more charges, by:
 - (a) Reprimand;
 - (b) Suspension for a period not to exceed six (6) months;
 - (c) Reducing the grade if the commissioned employee's classification warrants it;
 - (d) Combining any two (2) or more of the punishments;
 - (e) Reducing the monthly salary of the commissioned employee by not more than twenty percent (20%) for not more than six (6) months; or
 - (f) Dismissing him from the service of the department.

**15A.372 Trial board for hearings on charges against commissioned employees --
Right to hearing -- Appeals.**

- (1) For the purpose of hearing charges against any commissioned employee, there is created a trial board, which shall consist of the commissioner of the Department of Kentucky Vehicle Enforcement and a panel of ten (10) commissioned employees appointed by the commissioner. The commissioner shall designate from the panel not less than three (3) nor more than seven (7) members to hear charges against any commissioned employee. Hearings before the trial board shall be conducted in accordance with KRS Chapter 13B.
- (2) The commissioned employees appointed to the trial board shall:
 - (a) Fulfill the duties of the board in addition to their other duties; and
 - (b) Be reimbursed for travel and necessary expenses pursuant to the provisions of KRS 18A.200.
- (3)
 - (a) A defendant may, for cause, challenge the right of any member of the trial board to hear charges against him.
 - (b) If the other members of the trial board determine that the challenge is justifiable, the trial board member in question shall be:
 1. Excused from hearing the charges; and
 2. Replaced by another member of the trial board.
- (4) The rights conferred upon a commissioned employee by this section shall not accrue until he has been employed for a period of one (1) year.
- (5) No commissioned employee is entitled to a hearing as provided in this section unless his suspension is for more than twenty (20) days, or his pay is reduced more than ten percent (10%); but if the employee receives more than twenty (20) days' suspension or a reduction in salary of more than ten percent (10%) within a period of one (1) year, he shall have the right to a hearing.
- (6) The dismissal, demotion, suspension, or other penalization of a noncommissioned employee shall comply with the provisions of KRS 18A.095 and 18A.100.
- (7) Any commissioned employee found guilty by the trial board of any charge under the provisions of KRS 15A.371 shall have the right to appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

TAB 5

KRS CHAPTER 16

CHAPTER 16 STATE POLICE

16.050 Appointment and compensation of personnel; Department of Kentucky State Police Personnel Board; organization, duties, and compensation

- (1) The commissioner shall appoint or promote to the ranks and grades and positions of the department such officers as are considered by him or her to be necessary for the efficient administration of the department. Notwithstanding the provisions of KRS 64.640, the commissioner of the Department of Kentucky State Police and the secretary of the Personnel Cabinet shall biennially conduct a salary survey, by rank, of State Police/highway patrol officers in those states adjoining Kentucky. The salaries of such officers of equal rank in those states surveyed shall be averaged, and such averages where the average for that rank exceeds the salary paid to Kentucky officers of that rank in the preceding biennium shall be included in the department's budget request submitted to the Kentucky General Assembly.
- (2) All initial appointments of officers to the department shall be made for merit and fitness after a competitive examination.
- (3) There is created a Department of Kentucky State Police Personnel Board consisting of the commissioner and four (4) other members to be appointed by the Governor, two (2) to be appointed from each of the two (2) major political parties.
- (4) The initial appointment of members of the board shall be for terms of one (1), two(2), three (3), and four (4) years. Thereafter each appointment shall be for a term of four (4) years, except that a person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed for the remainder of that term.
- (5) Members of the board may be removed by the Governor only for cause, after being given a copy of charges against them and an opportunity to be heard publicly on such charges before the Governor.
- (6) The board shall elect one (1) of its members chairman. It shall meet at such time and place as shall be specified by call of the commissioner. Three (3) members shall constitute a quorum for the transaction of business. Members of the board other than the commissioner shall receive compensation of fifty dollars (\$50) and reimbursement of travel expenses for each meeting of the board which they attend.
- (7) The board shall promulgate administrative regulations to carry out the purposes herein, which shall include provisions for:
 - (a) Open competitive examination as to fitness of applicants for employment as officers; and
 - (b) Establishment of eligible lists as a result of such competitive examinations, from which lists vacancies shall be filled.

- (8) The board shall hear appeals from applicants for employment for which examinations are being given or have been conducted and from eligibles on examination registers subject to the procedural rules which the board may adopt pursuant to the provisions of this section.

16.055 Promotions; terms and conditions

- (1) Promotions to sergeant within the department shall be on the following terms and conditions:
- (a) The applicant must have served six (6) years of continuous service as a commissioned State Police officer to be eligible for promotion to sergeant;
 - (b) Promotions shall be based on cumulative scores computed from twenty percent (20%) on personnel performance evaluation, forty percent (40%) on job simulation examination, and forty percent (40%) on a written examination;
 - (c) The promotional list shall continue in existence for one (1) year, shall consist of the numerical scores and rankings of each applicant, and promotions shall be made in consecutive order beginning with the highest numerical ranking to fill an interim vacancy. When two (2) or more applicants receive the same numerical score, the order of placement on the list shall be determined by seniority of service. Upon the determination of a new numerical ranking following a new examination, all previous rankings shall be null and void;
 - (d) The written examination shall be prepared and administered by an individual designated by the commissioner. The materials and textbooks will be selected by the commissioner and his or her staff. The commissioner will inform all applicants at least three (3) months prior to the examination date of the exact material from which test questions will be taken;
 - (e) The written test shall be administered to all applicants at the same time. Immediately upon completion of the written test the applicant will receive his or her numerical score. Such numerical score shall remain valid for a period of two (2) years following the date of examination unless the source material upon which the test is based is changed by more than thirty percent (30%);
 - (f) The job simulation examination shall be evaluated by boards designated by the commissioner consisting of the commissioner or his or her designated appointee not lower than rank of captain, an officer from another police agency of the rank equal to the position for which the applicant is competing, an instructor from an accredited law enforcement education program, a personnel director from private industry, and an officer from the Kentucky State Police of the rank equal to the position for which the applicant is competing;
 - (g) The designated job simulation examination boards will perform all evaluations under guidelines developed and approved by the commissioner; and
 - (h) Personnel evaluations shall be made by the appropriate supervisory personnel under procedures established and approved by the commissioner.
- (2) Promotions from sergeant to lieutenant within the department shall be on the same terms and conditions as promotions to sergeant. In addition, any applicant for

lieutenant must have completed at least one (1) year of continuous service in grade as sergeant.

- (3) Promotions from lieutenant to captain within the department shall be on the same terms and conditions as promotions to lieutenant. In addition, any applicant for captain must have completed at least one (1) year of continuous service in grade as lieutenant.
- (4) The department will develop and administer only one (1) test for each of the above ranks. All eligible applicants will be permitted to participate in the promotional process to the next highest position of responsibility wherever a vacancy exists.
- (5) Officers promoted to rank of sergeant, lieutenant, or captain shall serve a probationary period for one (1) year of continuous service from the effective date of their promotions, and may be reverted to their previous rank with or without cause at any time during this period.
- (6) The provisions of KRS 16.140 to the contrary notwithstanding, all ranks above the grade of captain are temporary and shall not be subject to the provisions for selection and promotion as required herein. All officers in such temporary positions shall serve at the pleasure of the commissioner and shall revert to their previous permanent rank upon the termination of their temporary appointment.
- (7) The total number of supervisory officers of all classifications shall be limited to a ratio not to exceed one (1) supervisor for every five (5) nonsupervisory officers.
- (8) No officer of the department, other than temporary positions above the rank of captain, shall be promoted to the next highest rank without competing with other officers as prescribed by this promotional procedure.
- (9) There shall be no discrimination based on race, sex, age, national origin, color, religion, creed, or political affiliation with respect to the department promotional system. All personnel actions are to be based solely on merit.

16.060 Powers and duties of commissioner and officers

It shall be the duty of the commissioner and each officer of the department to detect and prevent crime, apprehend criminals, maintain law and order throughout the state, to collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals and to enforce the criminal, as well as the motor vehicle and traffic laws of the Commonwealth. To this end the commissioner and each officer of the department is individually vested with the powers of a peace officer and shall have in all parts of the state the same powers with respect to criminal matters and enforcement of the laws relating thereto as sheriffs, constables and police officers in their respective jurisdictions, and shall possess all the immunities

and matters of defense now available or hereafter made available to sheriffs, constables and police officers in any suit brought against them in consequence of acts done in the course of their employment. Any warrant of arrest may be executed by the commissioner or any officer of the department.

16.080 Administrative regulations governing officers and department; bonds of employees; oaths; acquisition of real estate

- (1) The commissioner shall promulgate administrative regulations for the enlistment, training, discipline, and conduct of officers of the department and he or she may promulgate administrative regulations for the governing and operation of the department as appear to him or her reasonably necessary to carry out the provisions of KRS 16.010 to 16.170.
- (2) The commissioner may require any officer or civilian who receives or disburses public funds in the course of his or her duties to file a bond, conditioned that he or she will honestly, correctly, and according to law, receive, disburse, and account for all public moneys coming into his or her hands. The commissioner and each officer shall execute a bond to the Commonwealth of Kentucky in the sum of not less than two thousand dollars (\$2,000), conditioned upon the faithful discharge of his or her duties. The premium on the bonds shall be paid by the department. The commissioner and each officer of the department shall, before entering upon the discharge of their official duties, take the constitutional oath of office.
- (3) Subject to the provisions of KRS 56.440 to 56.550, the commissioner, with the approval of the Governor and the secretary of the Finance and Administration Cabinet, may acquire real estate or interests therein, by purchase, lease, or otherwise, necessary for the purposes of the department, and, with like approval, provide for the acquisition or construction of necessary buildings and other permanent structures and facilities. Title to any real estate acquired shall be taken in the name of the Commonwealth.

16.140 Discipline and removal of officers; grounds and procedure; removal of civilian employees; probationary period

- (1) With the exceptions specified in this section, KRS 16.150, and KRS 16.160, no officer of the department shall be removed, suspended, reduced in grade or pay for any reason except inefficiency, misconduct, insubordination, or violation of law or of any administrative regulation promulgated by the commissioner. Any person may prefer charges in writing against any officer, which shall be filed in the Office of Internal Affairs, which shall be designated by the commissioner as the recipient of charges and shall be administratively responsible for the maintenance of good order within the department through the collection and investigation of charges and the

retention of their dispositions. The charges shall be signed by the person making the same, and shall set out with clarity and distinction each and every charge. The commissioner, whenever probable cause appears, shall prefer charges against any officer whom he believes to have been guilty of conduct justifying his removal or punishment, in the interest of public order. Within five (5) days after the filing of charges, the Office of Internal Affairs shall deliver a copy thereof, personally, by certified mail, return receipt requested to the officer offending. Within five (5) days after the receipt thereof, the officer may demand public hearing, or may admit the truth of the charges in whole or in part. If the officer admits the truthfulness of the charges, the commissioner shall remove, suspend, reduce in rank or pay the officer so offending, in proportion to the seriousness of the charges.

- (2) If the charges are denied and the officer demands a hearing within the time above specified, he shall make his demand known to the commissioner in writing. After demand for hearing has been made, the commissioner within twenty (20) days from the date thereof shall arrange for a public hearing before a trial board to be constituted in the manner provided in this section. The officer defendant shall be given not less than twenty (20) days' notice of the time, place, and hour of the hearing.
- (3) Upon the hearing, all charges shall be considered traversed and put in issue, and the trial shall be confined and limited to the issues presented by the written charges. The trial board hearing the charges may summon and compel the attendance of witnesses at all hearings or sittings, by subpoena issued by the commissioner and served upon any witness by any sheriff or other person authorized by law to serve process. If any person fails to comply with any lawful order of the department or with process, or if any witness refuses to testify concerning any matter in which he may lawfully be interrogated, any Circuit Judge, upon application of the trial board, or the commissioner, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify in that court.
- (4) The officer defendant shall have the right to subpoena in his behalf any witnesses he may desire, upon furnishing their names to the trial board or to the commissioner. The officer shall likewise have the right to appear in person and by counsel.
- (5) All charges against the officer defendant, together with all proceedings before the trial board, shall be transcribed and reduced to writing and a permanent record kept thereof.
- (6) In any instance where the commissioner has probable cause to believe that an officer has been guilty of conduct justifying his removal or punishment, he may immediately suspend the officer from duty, or from both pay and duty, pending trial, and the officer shall not be again placed on duty or allowed pay thereafter until a determination of the charges under this section.

- (7) The trial board, after hearing the charges, shall fix the punishment of any officer found guilty of any one (1) or more charges, by reprimand or suspension for any length of time not to exceed six (6) months, or by reducing the grade if the officer's classification warrants same, or by combining any two (2) or more of the punishments, or by reducing the monthly salary of the officer by not more than twenty percent (20%) for not more than six (6) months, or by removing or dismissing from the service of the department any officer so found guilty.
- (8) For the purpose of hearing charges against any officer, as set forth in this section, there is created a trial board, which shall consist of the commissioner and of a panel of ten (10) officers of the department appointed by the commissioner. The commissioner shall designate from the panel not less than three (3) nor more than seven (7) members thereof to hear charges against any officer in the manner and under the procedure above set forth. The commissioner may promulgate reasonable administrative regulations governing the procedure before the trial board, which do not conflict with this section. The panel or trial board shall be a continuing body, and the officers designated shall serve thereon in addition to their other duties and without any increase in compensation, except they may be reimbursed for meals, lodging, and traveling expenses incurred while in the performance of their official duties as members of the board. Any officer defendant may for cause challenge the right of any member of the board in the trial of any action against him, and if the remaining members of the board find that the challenge is justifiable, the member of the board shall be excused from hearing the charges, and another member substituted in lieu thereof.
- (9) No officer is entitled to a hearing as provided in this section, unless his suspension is for more than twenty (20) days, or his pay reduced more than ten percent (10%); but if the officer receives more than twenty (20) days' suspension or reduction in salary of more than ten percent (10%) within a period of one (1) year, he shall have the right to such hearing in the manner above provided.
- (10) Any civilian employee may be discharged, suspended, or reduced in pay at any time by the commissioner, pursuant to KRS Chapter 18A.
- (11) Any officer appointed to the department shall be considered on probation for a period of one (1) year from and after the date of his appointment, and during that period may be discharged or suspended or reduced in rank or pay, with or without cause, by the commissioner. The rights conferred upon an officer for a hearing, as provided in this section, shall not accrue until the officer has been employed by the department for a period of one (1) year or more.

Related case law decisions:

In *Hughes v. Welch*, 664 S.W.2d 205 (Ky.App. 1984), a case which involved the trial board of the Bureau of State Police being convened to hear charges against an officer.

The trial board found the officer guilty and recommended his dismissal from the state police. The Kentucky Court of Appeals ruled that this provision of law was established by the legislature, and has “endowed the trial board of the Bureau of State Police with the exclusive jurisdiction of discipline and removal of officers of the bureau subject only to strict review on appeal by K.R.S. 16.150(4).”

16.150 Appeal from disciplinary action or removal

- (1) Any officer of the department who shall be found guilty by the trial board of any charge as provided in KRS 16.140 shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court, provided the punishment be a suspension of more than twenty (20) days or his pay be reduced more than ten percent (10%), or if he is reduced in grade, if his classification so warrants, or is removed or dismissed from the department; provided, however, the enforcement of the judgment of the trial board upon said charges shall not be suspended during said appeal.
- (2) To perfect said appeal within the time specified, such officer shall file in the office of the clerk of the Franklin Circuit Court a copy of the order, of all the evidence heard, and of all the steps taken by the trial board relative to such charges, but shall first post a bond to secure the cost of the action in a lump sum to be approved by the circuit clerk, with corporate surety approved by the Office of Insurance as to solvency and responsibility and authorized to transact business in this state, or he may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to such appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.
- (3) Such action shall be set down for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the Franklin Circuit Court, except as to fraud or misconduct of some party engaged in the administration of KRS 16.010 to 16.170, or one (1) who is a member of the trial board, but the court shall otherwise hear the case upon the record as attested by the board, and in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:
 - (a) The board acted without or in excess of its powers;
 - (b) The order appealed from was procured by fraud; or
 - (c) If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from. After such a hearing, the court shall enter a judgment sustaining or setting aside the order of the trial board appealed from. The cost of the action shall follow the judgment of the court.

- (5) Any party aggrieved by a judgment of the Franklin Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure, but such appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time be extended by the Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

16.160 Restrictions on discipline or removal; reduction of force

No officer shall be suspended, reduced in rank or pay, or be discharged or dismissed, except as provided in KRS 16.140 and 16.150, and with the further exception that when insufficient funds require a reduction in expenditures, the officer or officers junior in point of service shall be first discharged.

16.170 Political activity forbidden

No officer of the department shall, directly or indirectly, give, solicit or receive, or be in any manner concerned in giving, soliciting or receiving, any assessment, subscription or contribution for any political party or political purpose whatever. No officer shall, orally or by letter, solicit or be in any manner concerned in soliciting any assessment, subscription or contribution for any political party or purpose whatever from any person holding a position in the department. No officer of the department shall take any part in political management or affairs or in political campaigns further than to cast his vote and to express privately his opinion. Violation of the provisions hereof shall be grounds for removal.

TAB 6

KRS CHAPTER 18A

CHAPTER 18A STATE PERSONNEL

18A.095 Rights of executive branch employees.

- (1) (a) The provisions of this section shall not apply to employees commissioned pursuant to the provisions of KRS 15A.370.
(b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of KRS 15A.371 and 15A.372.
- (2) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (3) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the intent to dismiss is based;
 3. The date, time, and place of such action or activity; and
 4. The name of the parties involved; and
 - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (4) The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (5) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (6) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (7) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:

- (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (8) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
 - (a) The effective date of his dismissal or other penalization;
 - (b) The specific reason for this action, including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the dismissal or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
 - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (9) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
 - (a) The demotion, suspension, or other penalization;
 - (b) The effective date of the demotion, suspension, or other penalization;
 - (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
 - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.
- (10) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (11) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
 - 1. The reallocation; and
 - 2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification.
- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration.

- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- (12) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (13) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (14) When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- (15) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board.
- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly.

- (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- (16) An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j).
- (17) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms.
 - (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney.
 - (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal.
 - (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- (18) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (19) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.
 - (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (20) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
 - (a) Employ class action procedures; or
 - (b) Conduct test representative cases.

- (21) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (22) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (23) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action.
- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (24) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (25) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (26) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.

- (27) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (28) For the purposes of subsections (3), (4), (5), (6), (7), and (8) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- (29) Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

18A.100 Appeal of final order of the Personnel Board.

- (1) Any final order of the board either upholding or invalidating the dismissal, demotion, suspension, or other penalization of a classified or an unclassified employee may be appealed either by the employee or by the appointing authority.
- (2) The party aggrieved may appeal a final order by filing a petition with the clerk of the Franklin Circuit Court in accordance with KRS Chapter 13B.

TAB 7
KRS CHAPTER 67C

CHAPTER 67C RESTRUCTURE OF LOCAL GOVERNMENT IN COUNTY CONTAINING CITY OF FIRST CLASS

Police Force Merit System in Consolidated Local Government:

67C.301 Definitions for KRS 67C.301 to 67C.327.

As used in KRS 67C.301 to 67C.327, unless the context otherwise requires:

- (1) "Board" means the consolidated local government police force merit board or boards hereinafter created.
- (2) "Chief" means a chief of a consolidated local government police force affected by KRS 67C.301 to 67C.327.
- (3) "Assistant chief" means the next in command to the chiefs of the consolidated local government police force or forces affected by KRS 67C.301 to 67C.327.
- (4) "Secretary" means the executive secretary employed by the consolidated local government police force merit board or boards created as provided by KRS 67C.301 to 67C.327.
- (5) "Officer" means any member of the consolidated local government police forces affected by KRS 67C.301 to 67C.327, including police officers, corporals, sergeants, lieutenants, and captains.

67C.303 Ordinance creating merit system and merit board -- Duties of board -- Appropriation of funds for expenses of board.

- (1) A consolidated local government shall, by ordinance, create a consolidated local government police force merit system and in the same ordinance shall establish a consolidated local government police force merit board. A board shall classify and examine applicants seeking employment as officers of the police force of the consolidated local government, excluding applicants for the positions of chief, assistant chief, and officers above the rank of captain. The board, except when prohibited, shall promulgate rules and regulations not inconsistent with KRS 67C.301 to 67C.327 governing the classification, qualification, examination, appointment, probation, promotion, demotion, suspension, and other disciplinary action within the consolidated local government police force of all officers affected and covered by the provisions of KRS 67C.301 to 67C.327, and shall hold hearings and impose, if necessary, penalties upon the personnel affected by KRS 67C.301 to 67C.327.
- (2) The legislative council of the consolidated local government shall annually appropriate funds for the reasonable and necessary expenses of the board.

67C.307 First meeting of board -- Officers -- Rules -- Voting.

- (1) The board shall meet within thirty (30) days of the creation of the board and the members shall select from among themselves a chairman and vice chairman and adopt such rules, regulations, and bylaws not inconsistent with KRS 67C.301 to 67C.327 for the necessary operation of the board. In all nondisciplinary matters requiring a vote, a majority of the board members present and voting shall determine any questions, provided that at least three (3) board members are present to constitute a quorum.
- (2) In cases of discipline, four (4) members of the board shall be present to constitute a quorum, one (1) of which shall be a police officer as defined in KRS 67C.305(3).

67C.313 Police officers deemed qualified to continue duties and to be permanent employees -- Probationary officers.

- (1) All police officers of whatever rank and title of a consolidated local government police force shall be covered by the provisions of this section, except probationary officers. All officers of a consolidated local government police force on active duty or service as of the effective date of an ordinance creating a consolidated local government police merit system and board, shall be deemed fit and qualified to continue their respective duties of employment on or for the consolidated local government police force without examination or further qualification.
- (2) All personnel covered by the provisions of this section, except probationary officers, shall be deemed to be permanent employees subject to their ability to satisfactorily perform their respective duties and further subject to their good behavior.
- (3) A probationary officer shall not be included in the merit system until that officer has satisfactorily completed his or her initial probationary period which shall be one (1) year from his or her sworn date. The one (1) year probationary period may be extended for up to six (6) months upon showing of just cause by the chief and approved by the board.
- (4) Officers covered by the provisions of KRS 67C.303 and serving promotional probationary periods shall not be deemed excluded from the merit system during the promotional probationary periods.

67C.315 Application to chief, assistant chief, and officers above the rank of captain.

- (1) The provisions of KRS 67C.303, 67C.305, 67C.307, 67C.309, and 67C.319 shall not apply to the chief of police, assistant chief, and any officers above the rank of

captain of the consolidated local government police force. These officers shall be appointed by the mayor and shall not be considered covered under the employment protections of the merit board, except as provided in subsection (2) of this section.

- (2) Any officer originally covered by the provisions of KRS 67C.303, 67C.305, 67C.307, and 67C.309 who shall accept an appointment and qualify as chief of police, assistant chief of police, or officer above the rank of captain shall be deemed to have received a leave of absence from the classified service for and during his or her service in either of these respective positions. Should any chief of police, assistant chief of police, or officer above the rank of captain cease to serve in that capacity, he or she shall be restored to the same classification and rank which he or she held prior to the appointment without loss of seniority in grade. Any person not covered by the provisions of KRS 67C.303, 67C.305, 67C.307, and 67C.309 when appointed to the position of chief of police, assistant chief of police, or officer above the rank of captain shall not be deemed to be part of the classified service and shall not be placed in any classification or rank in the classified service when he or she ceases to serve in that position unless he or she goes through the normal qualification and classification procedures required by the board.

67C.317 Soliciting and receiving political contributions -- Appointment or promotion for political service -- Discipline for failure to make political contribution -- Opinions and beliefs -- Political or religious controversies -- Political activity prohibited.

- (1) No officer while on duty or in uniform covered by the provisions of KRS 67C.301 to 67C.327 shall directly or indirectly solicit or receive or be in any manner concerned in receiving, soliciting, or publicizing any assessment, gift, subscription, or contribution to or for any political party or candidate for public office.
- (2) No person shall use or promise to use his or her personal influence or official authority to secure any appointment or promotion to any position of employment covered by the provisions of KRS 67C.301 to 67C.327, as a reward or return for personal or partisan political service. No candidate applying for original appointment or promotion to any position of employment covered by KRS 67C.301 to 67C.327 shall sign or execute or promise to sign or execute a resignation dated or undated in advance of his or her appointment or promotion. No officer covered by the provisions of KRS 67C.301 to 67C.327 shall be suspended, laid off, demoted, promoted, disciplined, or threatened, or in any way changed in rank, duty, or compensation for withholding or neglecting to pay or make any contribution of any sort, either in money, goods, services, or anything of value for any political purpose whatsoever.
- (3) No examination question on any examination given by the board shall relate to any Political or religious opinion, belief, affiliation, or service and no appointment,

promotion, demotion, suspension, or removal shall be brought about, affected, or influenced by these opinions, beliefs, affiliations, or services.

- (4) No officer covered by the provisions of KRS 67C.301 to 67C.327 shall foster, promote, or be concerned with any actions involving political or religious controversies or prejudices while in uniform.
- (5) No officer covered by KRS 67C.301 to 67C.327 and no probationary officer shall, while on duty, in uniform, or using public resources, propose or oppose the placement of a question or advocate for the adoption or defeat of a question to be voted upon by the voters of the government under which the officer is employed.
- (6) Nothing contained in KRS 67C.301 to 67C.327 shall be so construed as to abridge the rights of any officer with respect to his or her personal opinions, beliefs, and right to vote.

67C.319 Rules for qualification, appointment, and discipline of officers -- Chief examiner -- Promotional examinations -- Review of results -- Filling promotional vacancies.

- (1) Every consolidated local government police force merit system board created shall make, promulgate, and when necessary, amend rules for the qualifications, original appointment, probation, promotion, demotion, transfer, lay-off, reinstatement, suspension, and removal of the officers covered by KRS 67C.303, 67C.305, 67C.307, and 67C.309. No rule or regulation made, promulgated, or amended by any consolidated local government police force merit system board shall be inconsistent with the express provisions of this chapter. The board shall publish its rules and any amendments and shall supply certified copies to the mayor, legislative council, and the police chief and shall post a copy conspicuously in the office or place where the headquarters of the consolidated local government police is maintained. The copies of the rules and amendments shall be distributed and posted in the manner prescribed within three (3) days after adoption.
- (2) The rules in addition to other matters shall specifically provide for and cover the following:
 - (a) Physical, mental, educational, citizenship, and age requirements for new officers;
 - (b) Physical, mental, educational, citizenship, age, and length of service requirements for promotion from lower to higher rank or classification;
 - (c) A requirement that police officers have five (5) years of service as police officers before being eligible for promotion to the rank of sergeant;
 - (d) Provision for open, competitive, written, oral, and other mental and physical examinations to determine the relative fitness of all candidates for original appointment and for promotion;

- (e) A requirement of public notice of all examinations to be given by the merit board;
 - (f) Organization and meetings of the board; and
 - (g) Procedure and conduct of public hearings.
- (3) The board, with the approval of the mayor, shall employ a chief examiner who shall be professionally qualified and experienced in the field of testing and who shall formulate, give, grade, and administer all written or other examinations as required by the board.
- (4) Physical fitness for promotion shall be presumed unless certified to the contrary by the chief of police who shall supply the board with medical records of the disability.
- (5) At least ninety (90) days' notice shall be given before a promotional examination is conducted.
- (6) Promotional tests shall be graded, as determined by the board, to include written, oral, and other examination scores. In addition, seniority, not to exceed ten percent (10%) of a candidate's final evaluated rating, shall be awarded for each year of service. The results of the written, oral, and other examinations shall be combined with seniority to determine the applicant's final evaluated rating. If the number of candidates exceeds the number of positions in the rank for which the candidates are being tested, the chief examiner may set a cut-off score on any of the tests, excluding seniority, that candidates must meet or exceed in order for them to progress in the selection process. The cut-off score shall be set such that the number of candidates equals one-half (1/2) the number of positions in the rank for which the candidates are being tested, that number to be rounded up, at the time of the posting. If ties exist at the cut-off score, individuals having tied scores shall progress in the selection process.
- (7) Promotional eligibility lists shall contain the names of successful candidates in the order of their standing through examination. An individual's results and ratings are subject to review by the individual candidate but are otherwise confidential.
- (8) The chief examiner shall compile the results of all examinations. Upon completion of grading of examinations, candidates shall be informed by mail of the final evaluated rating attained and their individual ranking on the eligibility list. An applicant may, by appointment, discuss his or her examination results within the offices of the chief examiner during business hours at any time when such review will not interfere with the work of the board. Such review must be requested within ten (10) calendar days following the establishment of the eligibility list. The board shall make examination questions and answers available for inspection by the applicant upon the filing of a written challenge.
- (9) In filling promotional vacancies, the chief of police shall select from not more than five (5) candidates graded highest on the appropriate eligibility list. The board shall determine the justification for not promoting a candidate with the higher evaluated

rating who has been certified for promotion four (4) times. If the board determines that the candidate's nonpromotion is unjustified or unsupported by the evidence, the candidate shall be promoted. The certified rank list for promotions shall be valid for two (2) years and shall not be extended. All promotional vacancies shall be filled within sixty (60) days of the vacancy.

67C.321 Actions taken by chief against officers -- Written statement -- Answer -- Citizen charges of misconduct.

- (1) Any officer may be removed, suspended for a period not to exceed thirty (30) days, laid off, or reduced in grade by the chief for any cause which promotes the efficiency of the services, but before any such action is taken by the chief against any officer, the chief shall furnish the officer concerned with a written statement of the reasons why the described action is being taken. The officer may be reduced, removed, suspended for a period not to exceed thirty (30) days, or laid off from the date the written statement of reasons is served upon her or him. Each officer removed, suspended for a period not to exceed thirty (30) days, laid off, or reduced in grade shall be allowed a period of ten (10) days within which the officer may file a written answer to the charges and the reasons which caused her or his suspension, removal, or reduction. This answer shall be made a part of the official records of the police department. No trial or examination of witnesses shall be required in any such case except at the discretion of the chief. The chief shall likewise furnish a copy of the written charges and reasons for her or his action to the board.
- (2) Any citizen who makes written, sworn charges of misconduct concerning the actions of any police officer shall present the charges to the chief of police who shall investigate the charges. The chief of police shall determine what action, if any, shall be taken against the officer, subject to the limitations set out in this chapter. The citizen may appeal the determination of the chief of police to the board.

67C.323 Review of disciplinary actions -- Hearings -- Appeal.

In all cases provided for in KRS 67C.321, the action of the chief shall be final except in the following cases:

- (1) Every action in the nature of a dismissal, suspension, or demotion of a nonprobationary officer made by the chief shall be subject to review by the board at the request of any officer affected by KRS 67C.301 to 67C.327. An appeal to the board of a dismissal, demotion, or forty (40) hour or more suspension of a nonprobationary officer shall be heard by the full board. The board shall give notice and hold a public hearing. After the hearing, the board shall retire in executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. While in executive session, the board shall not

receive any further evidence or communication from any source prior to reaching its determination and conclusion. The board, while in executive session, may request and receive legal advice from board counsel on specific legal issues which may arise during deliberations. If a majority of the members of the board are of the opinion that the action of the chief is unjustified or unsupported by proper evidence, the order of the chief may be set aside and revoked by the board, and the board may impose the penalty or punishment it deems necessary and appropriate, if any; provided however, the board shall not impose a penalty or punishment in excess of the action of the chief. No officer shall be removed or dismissed except as provided for in this section.

- (2) An appeal to the board of a suspension of a nonprobationary officer of less than forty (40) hours may be heard by the full board or any hearing officer secured by the board. If the appeal is heard by a hearing officer, all rules established by the board relating to appeals of disciplinary actions shall be applicable. After the hearing, the hearing officer shall complete and submit to the board, no later than thirty (30) days after the hearing, a written recommended order which shall include his findings of fact, conclusions of law, and recommended disposition of the appeal, which may include recommended penalties. The recommended order shall also include a statement advising the appealing officer and chief fully of their exception and appeal rights. A copy of the hearing officer's recommended order shall be sent to the appealing officer and chief. Each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. The board shall consider the record including the recommended order in any exceptions duly filed to a recommended order, and accept and adopt or reject or modify, in whole or in part, the recommended order, or remand the appeal of the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The final order of the board shall be in writing. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The board shall render a final order in an administrative hearing within thirty (30) days after receipt of the hearing officer's recommended order.
- (3) (a) Every action of a dismissal, suspension, or demotion made by the board shall be final, except that any person aggrieved may, within thirty (30) days after the action, appeal to the Circuit Court of the county in which the board meets. The board shall be named respondent as the consolidated local government police force merit board, and service shall be had on the chairman of the board. The appeal taken to the Circuit Court shall be docketed by the clerk as a civil action with appropriate judicial review of an administrative action or decision.
- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to the appeal to the Court of Appeals shall be the same as in any civil action.

67C.325 Rights of officer brought before board -- Subpoenas.

Procedural due process shall be afforded to any police officer brought before the board. The officer shall be given a prompt hearing by the board, have an opportunity to confront his or her accusers, and have the privilege of presenting the board with evidence. The board shall have the power to issue subpoenas attested in the name of its chairman, to compel the attendance of witnesses, to compel the production of documents and other documentary evidence, and so far as practicable, conduct the hearing within the Kentucky Rules of Civil Procedure. Upon a showing of proper need, the board shall issue subpoenas to compel the attendance of witnesses, or to compel the production of documents and other documentary evidence for the benefits of the officer or the chief at the request of the officer or the chief.

Collective Bargaining for Police Officers in Consolidated Local Government:

67C.400 Definitions for KRS 67C.400 to 67C.418.

As used in KRS 67C.400 to 67C.418:

- (1) "Department" means the Kentucky Department of Labor within the Environmental and Public Protection Cabinet;
- (2) "Labor organization" means any chartered labor organization of any kind in which police officers participate and which exists for the primary purpose of dealing with consolidated local governments concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;
- (3) "Exclusive representative" means the labor organization which has been designated by the department as the representative of the majority of police officers in appropriate units or has been so recognized by the consolidated local government;
- (4) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers; and
- (5) "Commissioner" means the commissioner of the Department of Labor of the Commonwealth of Kentucky.

67C.402 Employees' right to organize for the purpose of collective bargaining -- Mayor to represent consolidated local government.

- (1) Police officers of a consolidated local government shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.

- (2) Labor organizations designated by the department as the representative of the majority of police officers in an appropriate unit or recognized by a consolidated local government as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of that unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.
- (3) Labor organizations recognized by a consolidated local government as the exclusive representative or so designated in accordance with the provisions of this section shall be responsible for representing the interest of all police officers in the unit without discrimination.
- (4) When a labor organization has been designated in accordance with the provisions of this section as the exclusive representative of police officers in an appropriate unit, the mayor of a consolidated local government or his designated authorized representative shall represent the consolidated local government in collective bargaining with the labor organization.

67C.406 Activities prohibited and duty to bargain in good faith.

- (1) Consolidated local governments, their representatives, or their agents are prohibited from:
 - (a) Interfering, restraining, or coercing police officers in the exercise of the rights guaranteed in KRS 67C.402;
 - (b) Dominating or interfering with the formation, existence, or administration of any labor organization;
 - (c) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided that nothing in this section, or in any other statute of this state, shall preclude a consolidated local government from making an agreement with a labor organization to require as a condition of employment membership therein on or after the thirtieth day following the beginning of that employment or on the effective date of the agreement, whichever is the later;
 - (d) Discharging or otherwise discriminating against an employee because he or she has signed or filed any affidavit, petition, or complaint or given any information or testimony under this section; or
 - (e) Refusing to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
- (2) Labor organizations or their agents are prohibited from:
 - (a) Restraining or coercing:
 - 1. Police officers in the exercise of the right guaranteed in KRS 67C.402;
 - and

2. A consolidated local government in the selection of a representative for the purposes of collective bargaining or the adjustment of grievances; or
 - (b) Refusing to bargain collectively in good faith with a consolidated local government, if they have been designated in accordance with the provisions of this section as the exclusive representative of police officers in an appropriate unit.
- (3) For the purposes of this section, to bargain collectively is to carry out in good faith the mutual obligation of the parties, or their representatives; to meet together at reasonable times, including meetings in advance of the budget-making process; to negotiate in good faith with respect to wages, hours, and other conditions of employment; to negotiate an agreement; to negotiate any question arising under any agreement; and to execute a written contract incorporating any agreement reached, if requested by either party. The obligation shall not be interpreted to compel either party to agree to a proposal, or require either party to make a concession.

67C.410 Unfair labor practices and remedies therefor -- Hearing -- Final order -- Appeal to Circuit Court.

Violations of the provisions of KRS 67C.406 shall be deemed to be unfair labor practices remedial by the department in the following manner.

- (1) Whenever it is charged by a consolidated local government or a labor organization that any person has engaged in or is engaging in any unfair labor practices, the department or any hearing officer designated by the department shall conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) If, upon the preponderance of the evidence presented, the department is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall issue a final order requiring the person to cease and desist from the unfair labor practice, and to take any affirmative action including reinstatement of police officers with or without back pay, as will effectuate the policies of this section. The final order may further require the person to make reports from time to time showing the extent to which he or she has complied with the order. If, upon the preponderance of the evidence presented, the department is not of the opinion that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the department shall issue a final order dismissing the complaint. No final order shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the department, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event the six (6) month period shall be computed from the day of his or her discharge. No final order of the department shall require the reinstatement of any individual as a police

officer who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause.

- (3) Until a final order has been appealed, the department at any time, upon reasonable notice and in the manner that it deems proper, may modify or set aside, in whole or in part, any final order made or issued by it.
- (4) The department or the charging party may petition for the enforcement of the final order and for appropriate temporary relief or restraining order in the Circuit Court for the county in which the violation occurred.
- (5) Any person aggrieved by a final order of the department may obtain a review of the final order by filing a petition in the Circuit Court assigned jurisdiction under subsection (4) of this section in accordance with KRS Chapter 13B.

67C.414 Requirements for an agreement -- Enforcement in Circuit Court.

- (1) Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties.
- (2) An agreement between the consolidated local government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section and signed by the mayor of the consolidated local government or the mayor's representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between a consolidated local government and a labor organization provided by this section shall be the exclusive method of making a valid agreement for police officers represented by a labor organization.
- (3) Suits for violation of agreements between a consolidated local government and a labor organization representing police officers may be brought by the parties to the agreement in the Circuit Court of the consolidated local government.

67C.418 Police officer or labor organization not to participate in strike.

No police officer of a consolidated local government shall engage in, and no police officer labor organization shall sponsor or condone, any strike.

TAB 8

KRS CHAPTER 70

CHAPTER 70 SHERIFFS, CONSTABLES, COUNTY POLICE FORCE

Sheriffs

70.30 Deputy sheriffs -- Certified court security officers -- Nonsworn personnel -- Participation in Law Enforcement Foundation Program.

- (1) The sheriff may appoint his or her own deputies and may revoke the appointment at his or her pleasure except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273. In a county containing a consolidated local government or city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. Before any deputy executes the duties of his or her office, he or she shall take the oath required to be taken by the sheriff.
- (2) The sheriff may appoint his or her own certified court security officers and may revoke the appointment at his or her pleasure. A certified court security officer shall take an oath to faithfully perform the duties of his or her office and that he or she possesses the minimum qualifications under KRS 15.3971.
- (3) The sheriff may appoint nonsworn clerical, technical, professional, and support personnel to assist him or her in the performance of the duties of his or her office. All nonsworn personnel shall serve at the pleasure of the sheriff.
- (4) No sheriff whose county has adopted a deputy sheriff merit board under KRS 70.260 shall appoint a deputy who is a member of the immediate family of the sheriff. The term "member of the immediate family" has the meaning given in KRS 70.260.
- (5) Except for certified court security officers, a sheriff's office may, upon the written request of the sheriff, participate in the Kentucky Law Enforcement Foundation Program Fund authorized by KRS 15.410 to 15.510 without the county establishing a deputy sheriff merit board. This subsection shall not prohibit the sheriff from requesting the consolidated local government or the fiscal court to establish a deputy sheriff merit board.

Related case law decisions:

In *Heggen v. Lee*, 284 F.3d 675, (C.A.6 (Ky.), 2002), the Sixth Circuit Court of Appeals decided the issue of whether Kentucky deputy sheriffs fell within the policymaking exception and could be dismissed because of their political affiliation. "In 1998, Defendant Gary Lee defeated former Sheriff Raymond Jones in the May 1998 primary election for sheriff of Hopkins County, Kentucky, and ran unopposed in the November general election. Each of the Plaintiffs were deputy sheriffs in Jones' administration.

Lee admits that he never solicited any support from Plaintiffs because he assumed that Plaintiffs would support Jones in the election. In addition, each Plaintiff actively supported Jones. After taking office, Lee decided not to rehire Plaintiffs; and made the argument in the case that the Plaintiffs fall under the “confidential” employee or “policymaker” exception to the general rule prohibiting patronage dismissals.

The Sixth Circuit held that a deputy sheriff could not be terminated on the grounds of his political affiliation. The court confirmed that the discharge of an employee for patronage reasons alone, such as the failure to support a party of the sheriff in a recent election, did raise First Amendment concerns.

The United States Supreme Court, held in Elrod v. Burns, 427 U.S. 347 (1976), that patronage dismissals, or the practice of discharging employees because they in some fashion support a political party other than the one supported by their employers, violate the First and Fourteenth Amendments to the U.S. Constitution. In his concurrence, Justice Stewart framed the issue another way, stating that a “nonpolicymaking, nonconfidential” government employee performing his or her position in a satisfactory manner cannot be dismissed solely on the grounds of political beliefs

In an “unpublished” opinion by the Kentucky Court of Appeals in the case of Robinette v. Pike County Sheriff's Dept., 2006 WL 2328621 (Ky.App.,2006), it was held that the more specific provisions of KRS 70.030(4) (enacted after KRS 15.520(4), and permitting a sheriff's office to “participate in the Kentucky Law Enforcement Foundation Program Fund authorized by KRS 15.410 to 15.510 without the county establishing a deputy sheriff merit board”) were controlling as to the deputy's employment, and recognized that the sheriff may appoint and revoke appointments at-will where the county has not established a deputy sheriff merit board.

In the case of McClure v. Augustus, 85 S.W.3d 584 (Ky. 2002), Sheriff Frank Augustus terminated Ronald McClure's employment as a McCracken County deputy sheriff. McClure subsequently requested a hearing before the McCracken County Deputy Sheriff Merit Board (Merit Board) to review Sheriff Augustus's decision. Before the Merit Board could hold a hearing on the matter, Sheriff Augustus filed an action for injunctive relief and declaration of rights in the McCracken Circuit Court.

The circuit court concluded that the Deputy-Sheriff Merit Board statutes were unconstitutional and granted injunctive relief. McClure appealed to the Court of Appeals, which affirmed on grounds that KRS 70.260 *et seq.* violated the separation of powers doctrine. It reasoned that “the dismissing of deputies is the exercise of an executive power by an independently elected officer [that] the legislative branch may not usurp”, meaning that the Sheriff could terminate the deputy without any due process.

The Kentucky Supreme Court stated that “In enacting the Deputy-Sheriff Merit Board statutes, the General Assembly permitted McCracken County to elect to transfer the executive power of removal from one executive, the sheriff, to another, the Merit Board,

which is an administrative agency that acts in an executive capacity when it makes personnel decisions". Thus, while Sheriff Augustus had the common-law authority to remove McClure at will, that authority "must yield to the superior policy of legislative enactment...." and therefore McClure was entitled to a hearing before the Merit Board.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to terms and general matters of deputies, summarized below:

OAG 95-6 "Top ranking and policy making deputy sheriffs may not be lawfully excluded from coverage under deputy sheriff merit board provisions by a local ordinance creating such a board, and such provisions do not provide or imply that the term of office of a deputy sheriff shall extend beyond the service of the appointing sheriff".

OAG 84- 31 "The tenure of deputy sheriffs ends with the death of their appointing sheriff" and "Deputy sheriffs may be terminated at the will of the incumbent sheriff".

OAG 98-13. "Full-time sworn deputy sheriffs, irrespective of primary duties or job assignments, are eligible for funding under KLEFP. Since the statute does not authorize any Executive Branch agency to promulgate administrative regulations to further define this term, any additional requirements on eligibility would be improper and contrary to the express intent of the General Assembly".

OAG 83-301 "When reading KRS Chapter 70 as a whole, and especially KRS 70.030, it is our opinion that the sheriff's staff is to be made up of appointed deputies. The sheriff employs deputies, regardless of what sheriff's function they are assigned to carry out".

70.040 Deputy's acts and omissions; liability for

The sheriff shall be liable for the acts or omissions of his deputies; except that, the office of sheriff, and not the individual holder thereof, shall be liable under this section. When a deputy sheriff omits to act or acts in such a way as to render his principal responsible, and the latter discharges such responsibility, the deputy shall be liable to the principal for all damages and costs which are caused by the deputy's act or omission.

70.045 Special deputies

- (1) The sheriff of a county with a population of ten thousand (10,000) or more may appoint and have sworn in and entered on the county clerk order book one (1) special deputy for each two thousand five hundred (2,500) residents or part thereof in his county, to assist him with general law enforcement and maintenance

of public order. The sheriff of a county with a population of less than ten thousand (10,000) may appoint and have sworn in and entered on the county clerk order book one (1) special deputy for each one thousand (1,000) residents or part thereof in his county, to assist him with general law enforcement and maintenance of public order. The population of the county shall be determined by the most recent count or estimate by the Federal Bureau of Census.

- (2) The sheriff in each county may appoint and have sworn in, and entered on the county clerk order book, as many special deputies as needed to assist him in the execution of his duties and office in preparation for or during an emergency situation, such as fire, flood, tornado, storm, or other such emergency situations. For purposes of this section only, an emergency situation is a condition which, in the judgment of the sheriff, requires a response immediately necessary for the preservation of public peace, health or safety, utilizing special deputies previously appointed in preparation for the contingency.
- (3) The special deputy shall:
 - (a) Be appointed and dismissed on the authority of the sheriff;
 - (b) Not receive any monetary compensation for his time or services;
 - (c) Serve at the request of the sheriff, unless personal conditions rule otherwise;
 - (d) Be answerable to and under the supervision of the sheriff, who shall be responsible for the actions of the special deputy; and
 - (e) Be appointed regardless of race, color, creed, or position.
- (4) The position of special deputy as created and defined in subsections (1), (2), and (3) is subject to the provisions of this section only.

70.260 Option for county to create deputy sheriff merit board -- Expenses -- Membership -- Meetings -- Exclusion of certain deputy sheriffs who serve In policy-making positions.

- (1) The primary legislative body of each county may enact an ordinance creating a deputy sheriff merit board, which shall be charged with the duty of holding hearings, public and executive, in disciplinary matters concerning deputy sheriffs. For the purpose of KRS 70.260 to 70.273, the primary legislative body of each county that does not have an urban-county, consolidated local government, or charter county government shall be the fiscal court.
- (2) The reasonable and necessary expenses of the board, including the funds necessary to retain an attorney to advise the board on legal matters, shall be paid out of the fees and commissions collected by the sheriff. If the fees and commissions are not sufficient to pay the expenses of the board and the other expenses authorized by statute to be paid from these fees and commissions, the

sheriff may negotiate with the primary legislative body to determine a method of paying all or part of the expenses of the board.

- (3) The board shall consist of five (5) members, two (2) members appointed by the county judge/executive or the chief executive officer of an urban-county government or the chief executive officer of a consolidated local government pursuant to the provisions of KRS 67C.139 with approval by the primary legislative body, two (2) members appointed by the county sheriff, and one (1) member elected by the deputy sheriffs of the county. Each board appointee shall be at least thirty (30) years of age and a resident of the county. No person shall serve on the board who is a deputy sheriff or who holds any elected public office. No person shall be appointed to the board who is a member of the immediate family of the sheriff of the county served by the board. The members of the board shall not receive a salary but shall receive reimbursement for necessary expenses.
- (4) All appointments shall be for two (2) years, and any vacancies shall be filled by the sheriff or county judge/executive, or the chief executive officer of an urban-county government or consolidated local government responsible for the appointment of the departing board member.
- (5) The board shall elect a chairman from its membership and keep an accurate record of its proceedings.
- (6) The board shall meet when a disciplinary matter concerning a deputy sheriff is brought to its attention or at other times at the discretion of the board, upon notification of its members.
- (7) Three (3) members shall constitute a quorum in all matters which may come before the board.
- (8) For the purpose of this section, "member of the immediate family" means a person's father, mother, brother, sister, spouse, son, daughter, aunt, uncle, son-in-law, or daughter-in-law.
- (9) An ordinance, adopted under subsection (1) of this section by a county or consolidated local government, may exclude deputy sheriffs who serve in policy-making or confidential positions from coverage by the merit system. If the ordinance makes this exclusion, a deputy sheriff who is covered by the merit system and who accepts an appointment in a policy-making or confidential position shall be deemed to have received a leave of absence from the merit system during the incumbency of that position. If he ceases to serve in a policy-making or confidential position but continues to serve as a deputy, he shall be restored to coverage at the same classification and rank that he held prior to his policy-making position under the merit system. A deputy who is not covered by the merit system at the time he is appointed to a policy-making or confidential position shall be

deemed not to be part of the merit system and shall not be included in the merit system when he ceases to serve in that position.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to terms of deputies, summarized below:

OAG 95-6 “Top ranking and policy making deputy sheriffs may not be lawfully excluded from coverage under deputy sheriff merit board provisions by a local ordinance creating such a board, and such provisions do not provide or imply that the term of office of a deputy sheriff shall extend beyond the service of the appointing sheriff”.

70.261 Adoption of rules; certified copies; subjects addressed; issuance of additional rules; repeal or amendment of existing rules

- (1) When a county creates a deputy sheriff merit board, the board shall issue, and publish within forty-eight (48) hours after their adoption, rules that are not inconsistent with the provisions of KRS 70.260 to 70.273. The board shall provide a certified copy of the rules to:
 - (a) The sheriff of the county who shall additionally post a copy in a conspicuous place in the main office and in any branch offices where deputies are regularly assigned to work from;
 - (b) The county judge/executive of the county; and
 - (c) The legislative body of the county.
- (2) The board shall, at a minimum, adopt a body of rules that addresses the following subjects:
 - (a) For deputy sheriffs:
 1. Qualifications for initial and continued employment, which shall at a minimum include: citizenship, age, physical, mental, and educational requirements;
 2. Grounds for temporary appointments;
 3. Advancement requirements. Deputy sheriffs shall be employed for at least three (3) full years before being eligible for the rank of sergeant;
 4. Factors that shall, or may, result in demotion, the procedures for determining whether or not to demote a deputy, and the procedures for executing a demotion;
 5. Factors that shall, or may, result in fining, probation, suspension, or removal; and

6. Administrative procedures for the deputies in the office such as transfer, layoff, and reinstatement.
- (b) For the general administration of the board itself:
 1. Organizational structure and conduct of meetings;
 2. Procedure and conduct of public hearings as a result of the board's actions; and
 3. Implementation and execution of written and oral examinations, and physical tests of fitness for appointment and promotion of deputies.
- (3) The subsequent issuance of additional rules, or of the repeal or amendment of existing rules shall follow the provisions indicated in subsection (1) of this section.

70.262 Collective bargaining for deputy sheriffs in merit system in county containing a consolidated local government or a city of first class; prohibition against strikes; employment contract with sheriff

- (1) In any county containing a consolidated local government or city of the first class that has adopted a merit system under KRS 70.260 to 70.273, deputies subject to the merit system may organize, form, join, or participate in organizations in order to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection, and to bargain collectively through a representative of their own free choice. Deputies shall also have the right to refrain from any or all of these activities but shall be subject to the lawful provisions of any collective bargaining agreement entered into under this section. Strikes by deputies of any collective bargaining unit shall be prohibited at any time.
- (2) In any county containing a consolidated local government or city of the first class that has adopted a merit system under KRS 70.260 to 70.273, the sheriff shall contract with a representative of the deputies described in subsection (1) of this section employed by the sheriff where the representative has established representation of a majority of the deputies, with respect to wages, hours, and terms and conditions of employment, including execution of a written contract incorporating any agreement reached between the sheriff and the representative. The sheriff shall not be required to bargain over matters of inherent managerial policy.

70.263 Training requirements for counties having deputy sheriff merit board; training for deputy sheriff providing security service to the courts

- (1) Each person serving as a covered deputy sheriff on the effective date of an ordinance that creates a deputy sheriff merit board for the county in which he serves shall have successfully completed, within one (1) year following the effective date of that ordinance, at least six hundred forty (640) hours of training

approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received before the effective date of the ordinance may be used to satisfy all or part of this requirement.

- (2) Each person appointed as a covered deputy sheriff in a county that has adopted a deputy sheriff merit board before the date of his appointment shall have successfully completed, within one (1) year following the appointment, at least six hundred forty (640) hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received before the effective date of the ordinance may be used to satisfy all or part of this requirement.
- (3) A deputy sheriff whose official duty is to provide security service to the courts, and who is compensated pursuant to KRS 64.092, shall, the provisions of subsections (1) and (2) of this section notwithstanding, satisfy the training requirements for employment if he completes law enforcement training which the Administrative Office of the Courts certifies to the sheriff as acceptable. If the training was not received prior to the effective date of the ordinance creating the deputy sheriff merit board, in the case of a deputy sheriff serving when the ordinance was passed, or prior to appointment in the case of a deputy sheriff appointed after the effective date of the ordinance, then it shall be received within one (1) year following the effective date of the ordinance or the date of appointment, as the case may be.
- (4) A person failing to meet the requirements of this section shall forfeit his position as deputy sheriff immediately upon the expiration of the applicable one (1) year time limit.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to terms of probation and general matters of deputies, summarized below:

OAG 93-51 "While a deputy sheriff, who was serving in that capacity on the effective date of a local ordinance establishing a deputy sheriff merit board, is required to obtain certain training within one year of that effective date, or forfeit the position of deputy sheriff, a deputy's employment status is not rendered "probationary" by virtue of that training requirement, or by virtue of any other statutory language related to deputy sheriff merit boards".

70.265 Deputy sheriff merit boards to employ chief examiner; duties

- (1) Deputy sheriff merit boards shall employ a chief examiner who shall operate under the board's sole supervision.

- (2) The board shall only employ a person for this position who is qualified and experienced in the field of testing.
- (3) The examiner shall design, administer, and evaluate all written tests the board requires applicants for promotion to take for consideration for promotion. Each applicant for promotion shall be given an oral and written examination to determine the applicant's qualification for promotion.
- (4) The examiner shall select a panel of three (3) persons to conduct the oral portion of the exam battery. The panel shall be selected from an agency other than the local sheriff's office, and the panel members shall be of at least the same rank to which the applicant aspires and of the same field.
- (5) Unless the sheriff certifies that the applicant is not physically fit for promotion, physical fitness shall be presumed.
- (6)
 - (a) The composite score of the examination battery shall be calculated as follows:
 1. Sixty-five percent (65%) for the written examination; and
 2. Thirty-five percent (35%) for the oral examination.
 - (b) An applicant shall receive one (1) seniority point to be added to the composite score for each full year over three (3) full years of service. No applicant shall receive more than ten (10) seniority points. No applicant shall receive a seniority point for serving less than a full year.
- (7) Testing and scoring methods shall not depart from, or be inconsistent with, those set out in this section.
- (8) The chief examiner shall deliver the final scores of the applicants for promotion, in a manner that will ensure complete privacy and confidentiality of the applicants and their scores, directly to the chair of the board. The chief examiner shall not release this information to anyone but the chair of the board.
- (9) Notice of the date, time, and place of examinations shall be given no later than ninety (90) days before the examination date.
- (10) Promotions shall be filled by the sheriff from a list of no more than three (3) of the candidates who obtained the highest combined scores on the written and oral examination, including any seniority points, and are physically fit to serve in the new capacity.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to terms of probation and political matters of deputies, summarized below:

OAG 95-6 “Top ranking and policy making deputy sheriffs may not be lawfully excluded from coverage under deputy sheriff merit board provisions by a local ordinance creating such a board, and such provisions do not provide or imply that the term of office of a deputy sheriff shall extend beyond the service of the appointing sheriff”.

OAG 93-51 “While a deputy sheriff, who was serving in that capacity on the effective date of a local ordinance establishing a deputy sheriff merit board, is required to obtain certain training within one year of that effective date, or forfeit the position of deputy sheriff, a deputy's employment status is not rendered “probationary” by virtue of that training requirement, or by virtue of any other statutory language related to deputy sheriff merit boards”.

OAG 93-9 From a plain reading of KRS 70.267(1) it appears that a deputy sheriff is prohibited from participating in fund or gift solicitation matters of a political party or candidate, and by KRS 70.267(3) from being a candidate for any public office” meaning that a “Deputy sheriffs may, while off duty, engage in political activity which does not involve solicitation of contributions or gifts to a political party or candidate”.

70.267 Prohibited conduct -- Construction of section -- Probationary period.

- (1) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall directly or indirectly solicit, receive, or be in any manner concerned in receiving, soliciting, or publicizing any assessment, gift, subscription, or contribution to or for any political party or candidate for public office.
- (2) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be suspended, laid off, demoted, promoted, disciplined, threatened, or in any way changed in duty or compensation for withholding or neglecting to pay or make contributions of any sort, either in money, goods, services, or anything of value for any political purpose. Nothing in this subsection shall limit the power of a sheriff to revoke the appointment of a deputy during the probationary period described in subsection (5) of this section.
- (3) No deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall be a candidate for any public office. Any person who violates this subsection shall forfeit his position as deputy sheriff.
- (4) Nothing contained in this section shall be construed to abridge the rights of any deputy sheriff with respect to his personal opinions, beliefs, or right to vote.
- (5) A deputy sheriff's employment shall be probationary during the first year of service following an initial appointment or a promotional appointment. A sheriff may, at his

pleasure, revoke the appointment of a deputy who works for him at any time within one (1) year following the appointment.

70.270 Disciplinary and removal procedures by sheriff -- Charges by citizen.

- (1) Any deputy sheriff may be removed, suspended, or laid off by the sheriff for any cause which will promote the efficiency of the department. Except when an appointment is revoked during the probationary period described in KRS 70.267(5), the sheriff shall furnish a covered deputy with a written statement of the reason why the action was taken.
- (2) Except for the revocation of an appointment pursuant to KRS 70.267(5), every action in the nature of a dismissal, suspension, or reduction made by the sheriff shall be subject to review by the board at the request of any deputy sheriff affected by the provisions of KRS 70.260 to 70.273.
- (3) Any citizen who makes written charges of misconduct, under oath, concerning the actions of any deputy sheriff covered by the provisions of KRS 70.260 to 70.273 shall present the charges to the sheriff, who shall investigate the charges. The sheriff shall determine what action, if any, shall be taken against the deputy, subject to the limitations set out in KRS 70.260 to 70.273. The citizen may appeal the determination of the sheriff to the board.

Related case law decisions:

In the case of *Humphrey v. Scott County Fiscal Court* 211 Fed.Appx. 390 (C.A.6 (Ky.) 2006), a deputy sheriff sued the Scott County Sheriff's Department pursuant to 42 U.S.C. § 1983 for violations of the Fourteenth Amendment's due process guarantees claiming the Sheriff's Department terminated him without notice and denied him the opportunity to be heard. The deputy, Hobert Wayne Humphrey, received sufficient oral notice of his termination when he met with Sheriff Hammons in October 2004, and he admitted as much in his deposition. Humphrey's arrest and prosecution also sufficiently apprised him about the reasons for his termination. The district court aptly summarized Humphrey's notice as follows:

Plaintiff's state court trial for Official Misconduct and Hindering Prosecution apprised him of the evidence against him stemming from his arrest on December 28, 2003. Considering that Plaintiff was fully aware that his arrest led to his being placed on administrative leave and that his conviction led to his termination, the Court does not agree that Defendants' failure to provide a written explanation of the reason why Plaintiff was terminated deprived Plaintiff of any due process protections.

The Sixth Circuit Court of Appeals held that “Humphrey received sufficient notice, and his meeting with Sheriff Hammons provided the informal opportunity for discussion required”.

70.273 Disciplinary and removal procedures by board -- Hearing -- Appeals.

- (1) The board may remove, suspend, lay off or discipline any deputy sheriff covered by the provisions of KRS 70.260 to 70.273 on written charges of misconduct preferred on its own initiative or the initiative of any citizen, but only after reasonable notice to the accused and after a complete public hearing at which the deputy accused shall have the right to be present, represented by counsel, and confronted by all of the witnesses preferring charges against him.
- (2) Procedural due process shall be afforded to all deputy sheriffs by the board. The board shall notify the deputy promptly and in writing of any charges brought against him by the board or by a citizen. The board shall have the power to issue subpoenas and to compel the attendance of witnesses, and shall conduct the hearing, as far as possible, within the Kentucky Rules of Civil Procedure. Any deputy who is not given a hearing within sixty (60) days of any charge being preferred shall be reinstated in full.
- (3) After a full public hearing by the board, the board shall retire into executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. The board in executive session shall not receive any further evidence or communication from any source, except for legal advice from the board's counsel, prior to reaching its determination and conclusion.
- (4) When an appointment is revoked during the probationary period described in KRS 70.267(5), the action of the sheriff shall be final. In all other disciplinary matters, the action of the sheriff or the board shall be final, except that any aggrieved person may, within thirty (30) days after the decision is rendered, appeal to the Circuit Court of the county in which the board meets. The board shall be named as respondent, and the county attorney shall represent the board before the court. The appeal taken to the Circuit Court shall be a review of record by the court.
- (5) The provisions of KRS 70.260 to 70.273 shall not apply to any nonsworn employee appointed by the sheriff pursuant to KRS 70.030, to any special deputy appointed by the sheriff pursuant to KRS 70.045, or to a deputy in a policy-making or confidential position excluded from coverage by the ordinance creating the deputy sheriff merit board.

Related case law decisions:

See McClure v. Augustus at KRS 70.30

70.290 Employment contract for deputy sheriff or peace officer; reimbursement of law enforcement agency when deputy or peace officer accepts employment with another agency

- (1)
 - (a) City and county law enforcement agencies, including sheriff's offices, may, as a condition of employment, require a newly appointed deputy sheriff or peace officer who will participate in the Kentucky Law Enforcement Foundation Fund Program, authorized by KRS 15.410 to 15.510, to enter into an employment contract for a period of no longer than three (3) years from the date of graduation from the Department of Criminal Justice Training, or other training approved by the Kentucky Law Enforcement Council.
 - (b) If a deputy sheriff or peace officer who has entered into a contract authorized under this subsection accepts employment as a peace officer with another law enforcement agency, that law enforcement agency shall reimburse the law enforcement agency that initially hired the deputy sheriff or peace officer for the actual costs incurred and expended which are associated with the initial hiring of that officer, including but not limited to the application process, training costs, equipment costs, salary and fringe benefits. The law enforcement agency that initially hired the deputy sheriff or peace officer shall be reimbursed for the costs from the time of the deputy sheriff or peace officer's initial application until graduation from the Department of Criminal Justice Training.
 - (c) The amount of reimbursement authorized by this subsection shall be prorated based upon the percentage of time that the deputy sheriff or peace officer completed of his or her employment contract. The amount of reimbursement authorized by this subsection after the pro rata amount is calculated shall be reduced by the cost of the training provided by the Department of Criminal Justice Training for the subject officer.
- (2) If a peace officer who has been employed by a state law enforcement agency for three (3) years or less accepts employment as a peace officer with a city or local law enforcement agency, that city or local law enforcement agency shall reimburse the state law enforcement agency that initially hired the peace officer for the costs expended with the initial hiring of that officer, including but not limited to the application process, training costs, equipment costs, salary and fringe benefits. The state law enforcement agency that initially hired the peace officer shall be reimbursed for the costs incurred and expended from the time of the peace officer's initial application until graduation from a Kentucky Law Enforcement Council approved training academy. The amount of reimbursement authorized by this subsection shall be prorated based upon the percentage of time that the peace officer has been employed.

70.320 Deputy constables in counties containing a city of the first or second class or a consolidated local government

- (1) The appointment of deputy constables shall be authorized only in counties containing a first or second class city or a consolidated local government. In counties containing a city of the first or second class or a consolidated local government, each constable may appoint one (1) or more deputies with the consent of the county judge/executive or the mayor, in a consolidated local government, as the case may be. The constable and his or her surety are liable on his or her bond for all the acts and omissions of his or her deputies.
- (2) Deputy constables may be removed at any time for any cause deemed sufficient by the constable by order of the county judge/executive or the mayor in a consolidated local government, as the case may be, entered after filing of a written direction by the constable.
- (3) Each deputy constable in counties containing a consolidated local government or city of the first class shall be compensated for his or her services by salary fixed by the consolidated local government or fiscal court, and paid out of the levy of the consolidated local government or county.

County Police Force and Auxiliary

70.540 County police force authorized; jurisdiction; appointment; qualifications; term; oath; officers

The county judges/executive of the respective counties shall have and are hereby given the power, jurisdiction and authority to establish, appoint and maintain a county police force within their respective counties, all of the members and officers of which shall have and are hereby given jurisdiction coextensive with the whole county for which they are appointed. Such police force may consist of a chief and such member, rank and grade subordinate to the chief, and such clerical and skilled employees as the county judge/executive shall deem proper. All of the members and employees of the county police force shall be appointed by the county judge/executive and shall serve for a term of one (1) year from the date of their respective appointments, unless sooner removed by the county judge/executive for neglect of duty or improper conduct. All members of the force shall be citizens of the United States not less than twenty-one (21) years of age and residents of the Commonwealth of Kentucky. None but discreet and sober persons shall be appointed to any position on said county police force. Each of the members of the said county police force shall take an oath, before the county judge/executive of their county, to faithfully, impartially and diligently perform the duties of their respective offices. Provided, however, that the chief officer of the county police

force of any county may be designated, in the discretion of the county judge/executive of said county, as captain or any other appropriate title, and such county police force in any county may consist of one (1) or more commanding officers, as the county judge/executive of such county may deem proper or adequate.

Related case law decisions:

In *Fiscal Court of Taylor County v. Taylor County Metro Police*, 805 S.W.2d 113 (Ky. 1991) the acts provided that “in 1982, the Taylor County Judge Executive formed a county police force, called the Taylor County Metro Police Force” (per KRS 70.540). “Following that action by the Judge Executive, Taylor Fiscal Court established a county police force merit system”. (per KRS 78.405).

“All went well with the county police force until mid-1987, with the Fiscal Court providing all its necessary operating expenses. With the final adoption of its 1987-1988 budget, the Fiscal Court appropriated only \$25,000 for the county police force which was inadequate for the force to operate for a full year. At the time of the hearing before the trial court, on March 4, 1988, the county police had no funds remaining with which to operate the police force for the balance of the county fiscal year. This law suit had been filed in response to that situation”.

The Supreme Court of Kentucky opined that “As much as we may agree with the decision to have a county police force, and or as much as we may disagree with the rendered appropriation which effectively eliminated the police force as a viable entity, we cannot substitute our judicial fiat for that of the clear legislative purpose and the traditional role of fiscal courts in setting legislative and fiscal policy”. Effectively, the fiscal court has the authority to set the level of funding for the operation of the statutorily authorized county police force, and even if its appropriation effectively eliminates the police force, the decision of the fiscal court is not subject to judicial review.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued an opinion related to county police forces, summarized below:

OAG 94-13 “The only viable funding mechanism that might fully support formation of a county police force is the general tax revenue of a county, via proper budgeting by the fiscal court. Operation of a county police force obviously has significant fiscal implications for a county. Authority to regulate and control the fiscal affairs of the county is vested with the fiscal court as a body”.

Related case law decisions:

In the case of Adams v. Com., 931 S.W.2d 465 (Ky.App. 1996), a Boyd County police officer observed the vehicle driven by the appellant speeding on Main Street in Westwood, Kentucky. The officer pursued the vehicle for several blocks before the appellant pulled over on a dead-end street. Just prior to stopping, the officer saw the appellant throw an object out of the car window. The object landed in the bed of pickup truck parked on the street and was later determined to be a blue bank bag. The officer placed the appellant under arrest for attempting to elude police.

The Kentucky Court of Appeals held that “It is uncontroverted that the arresting officer was a duly appointed member of the Boyd County Police Department in conformity with KRS 70.540, and, as such, he was a peace officer empowered to make arrests under KRS 431.005(1). KRS 446.010(24) specifically includes “policemen” within the definition of “peace officer.”

70.542 Auxiliary county police force

- (1) Except in counties containing a consolidated local government or city of the first class, or counties containing an urban-county government, the fiscal court of any county in which there is an established county police force pursuant to KRS 70.540, may provide for the establishment or abolishment of an auxiliary county police force to perform duties within the county upon such terms and conditions as the fiscal court deems necessary and proper. The fiscal court shall prescribe the number of members comprising such auxiliary county police force, and prescribe rules and regulations that shall govern the powers and duties of the members of such auxiliary county police force, unless otherwise provided in subsection (2) of this section.
- (2) A member of an auxiliary county police force shall:
 - (a) Be appointed by the county judge/executive and serve at his or her pleasure;
 - (b) Be answerable and under the direction of the county judge/executive, except when the county judge/executive delegates such authority to the chief officer of the county police force;
 - (c) Not receive any compensation or benefits for his or her time or service, except that the fiscal court may provide for the payment of any reasonable and necessary expenses incurred by a member of the auxiliary county police force in the conduct of his or her official duties; and
 - (d) Be appointed regardless of race, color, creed, or position.

- (3) Before any person is appointed as a member of an auxiliary county police force, he or she shall give bond to the county judge/executive in an amount as prescribed by the fiscal court. The fiscal court may authorize the premium therefor to be paid out of the general funds of the county.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued an opinion related to arrest powers, summarized below:

OAG 83-58 “Under KRS 70.542, except in counties containing a city of the first class, or counties containing an urban county government, the fiscal court of any county, which has an established county police force under KRS 70.540, may provide for the creation of an auxiliary county police force by proper ordinance. The fiscal court, in such ordinance, in our opinion, has the authority to extend to such auxiliary county policemen the full powers of arrest of a statutory peace officer, including the right to carry a weapon. Under these county legislative conditions, and once the auxiliary county policemen have been duly appointed and have taken oath, they become policemen and peace officers as long as they remain on the force”.

TAB 9

KRS CHAPTER 78

CHAPTER 78 COUNTY EMPLOYEES' CIVIL SERVICE AND RETIREMENT

County Police:

78.400 Definitions for KRS 78.400 to 78.480 and KRS 78.990.

As used in KRS 78.400 to 78.480 and KRS 78.990, unless the context otherwise requires the following words and terms shall have the following meaning:

- (1) "Board" means the county police force merit board or boards hereinafter created.
- (2) "Chief" means the chiefs of the county police forces affected by KRS 78.400 to 78.480 and KRS 78.990.
- (3) "Assistant chief" means the next in command to the chiefs of the county police forces affected by KRS 78.400 to 78.480 and KRS 78.990.
- (4) "Secretary" means the executive secretary and examiner employed by the county police force merit board or boards hereinafter created.
- (5) "Officer" means any member of the county police forces affected by KRS 78.400 to 78.480 and KRS 78.990 including chiefs and assistant chiefs and all commissioned or noncommissioned patrolmen, corporals, sergeants, lieutenants and captains.
- (6) "Employee" means all other employees of the county police forces affected by KRS 78.400 to 78.480 and KRS 78.990.

Related case law decisions:

In *Brown v. Jefferson County Police Merit Bd.*, 751 S.W.2d 23 (Ky. 1988), the Kentucky Supreme Court heard a case of a probationary police officer. "Brown had completed classroom instruction and field training and had been sworn in as a Jefferson County Police Officer with the rank of Grade C Patrolman on October 1, 1984. On August 18, 1985, she was involved in an off duty altercation wherein she struck a neighbor with a shovel, allegedly in self-defense. She was notified by the Chief of Police that she was suspended pending investigation of the incident, and then, on September 9, 1985, notified of termination from her employment for "the good of the department."

"Brown filed a notice of her intention to appeal from her termination with the Merit Board. The Merit Board dismissed her appeal *summarily*, without considering the merits, on grounds that under the "Rules and Regulations" of the Merit Board hers was a probationary appointment subject to removal during probation "by the Chief for the efficiency of the service," and under Merit Board Regulation 8.4(3):

"An employee so removed during any original probation period shall be dismissed. This action is not appealable by the employee."

"Brown then filed an original action in Jefferson Circuit Court designated a "statutory appeal pursuant to KRS 15.520(2) and KRS 78.455(2)," demanding that her right to a hearing be recognized under KRS Chapter 78, which provides for a county police force

merit system in Sections .400 to .480, and demanding reinstatement and employment with full back pay and benefits”.

“The statutory sections relied upon by the Merit Board and the Department for authority to promulgate the rules providing for a summary discharge of a police officer during the probationary period specify that such rules are for personnel “covered by” the system. The system itself compels a Board hearing so conducted as to provide administrative due process as spelled out in the statutes. It is an oxymoron to argue that there is a further statutory grant of authority to the Merit Board to create a class of employees not covered by the system”.

“The power to establish regulations establishing qualifications for original appointments, and to establish training before such appointment, gives no power to suspend the rights statutorily created for the protection of those who, having been appointed, are within the system. It is not our function to decide whether it would be good policy for the statute to permit a probationary period during which a police officer would continue to be subject to summary discharge. Such policy considerations are exclusively the prerogative of the legislature. Our function is limited to deciding whether the administrative regulations are in conflict with the statute or in excess of the statutory mandate”.

“KRS 78.425 provides in subsection (1) that “[a]ll police officers of whatever rank and title” are included in the merit system, and in subsection (3) that all personnel so covered “shall be deemed to be permanent employees subject to their ability to satisfactorily perform their respective duties and further subject to their good behavior.” This statute does not permit the existence of two classes of employees for purposes of the procedural protections conferred in KRS 78.400 to 78.460”.

“The last argument which needs to be addressed is Brown's claim to automatic reinstatement with full back pay under the last sentence of KRS 78.460, quoted above, and KRS 15.520(1)(h)(7), which includes within the “administrative due process rights” granted to police officers of local units of government”, The Court ruled that Brown was entitled to a remand for a trial on the merits which was erroneously denied her, but she is not entitled to automatic reinstatement with full back pay.

78.405 Powers of counties to create police force merit system -- Appropriations.

- (1) Any county of the Commonwealth of Kentucky may, by order of its fiscal court, duly made and entered of record, create a county police force merit system, and for that purpose, establish a county police force merit board, whose duties it shall be to classify and examine applicants seeking employment as officers or employees of the police force of the said county, and in addition thereto to promulgate rules and regulations not inconsistent with KRS 78.400 to 78.480 and 78.990 governing the classification, qualification, examination, appointment, probation, promotion, demotion, fine, suspension and other disciplinary action within the said county

police force of all personnel of the county police force or forces affected and covered by KRS 78.400 to 78.460 and 78.990, and in addition thereto, to hold such hearings, public and executive, and impose such penalties upon the personnel affected by KRS 78.400 to 78.460 and 78.990.

- (2) Fiscal courts affected hereby shall make appropriations of money for the reasonable and necessary expenses of the said board.

Related case law decisions:

In *Fiscal Court of Taylor County v. Taylor County Metro Police*, 805 S.W.2d 113 (Ky. 1991) the facts provided that “in 1982, the Taylor County Judge Executive formed a county police force, called the Taylor County Metro Police Force” (per KRS 70.540). “Following that action by the Judge Executive, Taylor Fiscal Court established a county police force merit system”. (per KRS 78.405).

“All went well with the county police force until mid-1987, with the Fiscal Court providing all its necessary operating expenses. With the final adoption of its 1987-1988 budget, the Fiscal Court appropriated only \$25,000 for the county police force which was inadequate for the force to operate for a full year. At the time of the hearing before the trial court, on March 4, 1988, the county police had no funds remaining with which to operate the police force for the balance of the county fiscal year. This law suit had been filed in response to that situation”.

The Supreme Court of Kentucky opined that “As much as we may agree with the decision to have a county police force, and or as much as we may disagree with the rendered appropriation which effectively eliminated the police force as a viable entity, we cannot substitute our judicial fiat for that of the clear legislative purpose and the traditional role of fiscal courts in setting legislative and fiscal policy”. Effectively, the fiscal court has the authority to set the level of funding for the operation of the statutorily authorized county police force, and even if its appropriation effectively eliminates the police force, the decision of the fiscal court is not subject to judicial review.

78.410 County police force merit boards.

- (1) The county judge/executive, subject to the approval of the fiscal court of the county, shall appoint four (4) persons, who shall constitute the county police force merit board of such county, who shall serve without compensation, and the county judge/executive shall be a member ex officio of the said board, but shall only vote in case of a tie vote on any matter before the board for determination. Each board appointee shall be at least thirty (30) years of age, a resident of the county affected, and not related by either blood or marriage to either the county judge/executive or any member of the fiscal court of the said county. The first members of any said board shall be appointed within the thirty (30) day period

following the effective date of an order duly made and entered by a fiscal court creating a county police force merit system and merit board, and one (1) member of the board shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. Thereafter, all appointments shall be for four (4) years except that appointments to fill vacancies within the respective terms shall be made only for the unexpired period of the respective terms. Any board member may be removed by resolution of the fiscal court of the county for neglect, incapacity, misfeasance or malfeasance on the part of said board members. No appointed board member shall hold any other public office elective or appointive during his term as a member of the board, and shall not receive any money, gift or consideration of any type from any person directly or indirectly for or on account of any recommendation, proposal or suggestion bearing upon the business of the board or the county police force. Not more than two (2) members shall be adherents of the same political party.

- (2) Each appointee, before entering upon the discharge of his duties, shall qualify by subscribing, taking and filing an oath of office as required by law.
- (3) The members of the county police department shall elect for a two (2) year term two (2) patrolmen of the county police department with a minimum of five (5) years service or more who shall serve as members of the county police force merit board for the purpose of deciding discipline cases only and who may vote in such cases. These members shall be elected during the month of July, 1978. In case of a vacancy, a new election shall be held within sixty (60) days of the date when the vacancy occurs and the person elected shall fill the remainder of the unexpired term.

Related case law decisions:

In the case of *Jefferson County Police Merit Bd. v. Arnold* , 593 S.W.2d 10 (Ky.App.,1980), "Arnold and Davis, were elected as patrolmen members of appellant, Merit Board, for the purpose of deciding disciplinary cases only. There were four regular members of the Merit Board who handled the routine business of the agency. On December 14, 1978, those members conducted a disciplinary hearing regarding a dismissed officer, Michael Jones, without notifying the appellees which resulted in their absence. Arnold, Davis and their county F.O.P. Lodge sought and were granted a permanent injunction prohibiting such hearing without the patrolmen members first being given written notice of such a meeting and hence this appeal".

The Kentucky Court of Appeals ruled that "By virtue of KRS 78.420(2) in order to conduct a disciplinary hearing four members of the board constitute a quorum, but one of those four must be a patrolman member as provided for in KRS 78.410(3), which means, in the instant case, that the meeting of December 14, 1978, was held by a board composed contrary to law and any action resulting therefrom was void".

78.420 Chairman, vice chairman -- Administrative regulations -- Voting, quorum.

- (1) Upon appointment and qualification of the members of the board, they shall meet within the thirty (30) days following the creation of the board and elect their chairman and vice chairman and adopt such rules and regulations and bylaws not inconsistent with KRS 78.400 to 78.480 and 78.990 for the proper conduct of their offices. In all matters requiring a vote, a majority of the board members present and voting shall determine any question, provided that at least three (3) board members be present to constitute a quorum.
- (2) In cases of discipline, four (4) members of the board must be present to constitute a quorum, one (1) of which must be a police officer as defined in subsection (3) of KRS 78.410.

Related case law decisions:

See Jefferson County Police Merit Bd. v. Arnold at KRS 78.410

78.425 Personnel included in merit system.

- (1) All police officers of whatever rank and title, and all employees, except civilian employees covered by a collective bargaining agreement, of every county police force affected by KRS 78.400 to 78.460 and 78.990 are covered by the provisions hereof, except probationary officers and employees. All covered officers and employees of every county police force on active duty or service as of the effective date of an order of the fiscal court of the county creating a county police merit system and board, shall be deemed fit and qualified to continue their respective duties of employment on or for their respective county police force without examination or further qualification, except and unless the chief of police of any county police force shall, within sixty (60) days after the establishment of the board, certify to the board that any officer or employee is physically unfit to continue his or her duties.
- (2) If a merit system is established which covers a county fire department, the provisions of subsection (1) shall apply to the county fire department as they apply to the county police force.
- (3) All personnel covered by the provisions (a) of KRS 78.400 to 78.460, or (b) KRS 67.323, 67.325 and this section, or both, except probationary officers and employees, shall be deemed to be permanent employees subject to their ability to satisfactorily perform their respective duties and further subject to their good behavior.

- (4) Probationary officers and employees shall not be included in the merit system until they satisfactorily complete their initial probationary periods established by the governing merit board. Officers and employees serving promotional probationary periods, however, shall not be deemed excluded from the merit system during the promotional probationary periods.

Related case law decisions:

See Brown v. Jefferson County Police Merit Bd., at KRS 78.400

78.428 Police officers excluded from classified service.

- (1) The provisions of KRS 78.400, 78.405, and 78.425 shall not apply to the chief of police, assistant chiefs, and any officers above the rank of captain of county police forces in counties having a population of 600,000 or more. Said officers shall be appointed by the county judge/executive and shall not be considered covered officers, except as provided in subsection (2) of this section.
- (2) Any employee covered by the provisions of KRS 78.400 to 78.480 who shall accept an appointment and qualify as chief of police or assistant chief of police shall be deemed to have received a leave of absence from the classified service for and during the incumbency of any of said respective positions. Should any such chief or assistant chief of police cease to serve as such there shall be restored to him the same classification and rank which he held prior to said appointment. Any person not covered by the provisions of KRS 78.400 to 78.480 when appointed to the position of chief of police or assistant chief of police shall not be deemed to be part of the classified service and shall not be returned to any classification or rank in the classified service when he ceases to serve in such capacity.

Related case law decisions:

See Brown v. Jefferson County Police Merit Bd., at KRS 78.400

78.435 Political activities forbidden.

- (1) No officer or employee covered by the provisions of KRS 78.400 to 78.460 shall directly or indirectly solicit or receive or be in any manner whatever concerned in receiving, soliciting or publicizing any assessment, gift, subscription or contribution to or for any political party or candidate for public office.

- (2) No person shall use or promise to use his personal influence or official authority to secure any appointment or promotion to any position of employment covered by the provisions of KRS 78.400 to 78.460, as a reward or return for personal or partisan political service. No candidate applying for original appointment or promotion to any position of employment covered by KRS 78.400 to 78.460 shall sign or execute or promise to sign or execute a resignation dated or undated in advance of such appointment or promotion. No officer or employee covered by the provisions of KRS 78.400 to 78.460 shall be suspended, laid off, demoted, promoted, fined, disciplined or threatened, or in any way changed in rank, duty or compensation for withholding or neglecting to pay or make any contribution of any sort, or character, either in money, goods or services or anything of value for any political purpose whatsoever.
- (3) No examination question in any examination held by the board shall relate to any political or religious opinion, belief, affiliation or service and no appointment, promotion, demotion, suspension, fine or removal shall be brought about, effected, affected or influenced by such opinions, beliefs, affiliations or services.
- (4) No officer or employee covered by KRS 78.400 to 78.460 shall foster, promote, or be concerned with any actions involving political or religious controversies or prejudices while in uniform.
- (5) Nothing contained in KRS 78.400 to 78.460 shall be so construed as to abridge the rights of any officer or employee with respect to his or her personal opinions or beliefs or right to vote.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to political activity of public employees, summarized below:

OAG 94-33 Asked if “a county police merit system board, created pursuant to KRS 78.405 may legally adopt regulations that require a county police officer to resign before he could run for office. In our view the answer is yes.

OAG 93-27 “Is it legal for Oldham County Police Officers, who are under a county police merit system, to be candidates for County Judge/Executive and Sheriff, while remaining on duty as county police officers. The general rule is that unless a given activity is properly banned, the activity can be engaged in. There is no absolute statutory ban in Kentucky on a county police officer under a county police merit system being a candidate for public office while employed as a police officer. See the discussion below, however, regarding on duty activity as distinguished from off duty activity”.

78.440 Board to promulgate rules governing certain subjects -- Publications -- Qualifications -- Requirements for promotion.

- (1) Every county police force merit system board created hereunder shall make, promulgate, and when necessary, amend rules for the qualifications, original appointment, probation, promotion, demotion, transfer, layoff, reinstatement, suspension, fine, and removal of the officers and employees covered by KRS 78.400 to 78.460. No rule or regulation made, promulgated, or amended by any county police force merit system board shall be inconsistent with the express provisions of this chapter. The board shall publish its rules and any amendments by supplying a certified copy to the county judge/executive, the fiscal court, and the chief, and by posting a copy conspicuously in the office or place where the headquarters of the county police is maintained. The rules and amendments shall be published in the manner prescribed within three (3) days after the adoption thereof.
- (2) The rules in addition to other matters shall specifically provide for and cover the following:
 - (a)
 1. Physical, mental, educational, citizenship, and age requirements for new employees and officers.
 2. Physical, mental, educational, citizenship, and age requirements for new employees and officers and seniority requirements for promotion from lower to higher rank or classification.
 3. A grade A patrolman shall have three (3) years of service as a grade A patrolman before he may be eligible for the promotion to the rank of sergeant. If there are fewer than fifty (50) police officers on the police force, the merit board may waive this service requirement.
 - (b)
 1. Open competitive written, oral, and physical tests to determine the relative fitness of all candidates and examinations for original appointment and for promotion.
 2. Public notices of examinations provided in subparagraph 1 of paragraph (b) and subparagraph 2 of paragraph (a) of this subsection.
 - (c) Temporary appointments in case of emergency.
 - (d) Organization and meetings of the board.
 - (e) Procedure and conduct of public hearings.
- (3) No county police force merit system board shall adopt a rule requiring the retirement of officers or employees prior to the first day of the month following the officer or employee's fifty-eighth birthday. This subsection shall not prohibit retirement prior to age fifty-eight (58) on a voluntary basis.
- (4) The board shall employ a chief examiner who shall be professionally qualified and experienced in the field of testing and who shall formulate, give, grade, and administer all written tests as required by the board. The chief examiner shall report to the board the results of all tests given by him and he shall be solely responsible to the board. The chief examiner shall select a panel of three (3) members to

conduct an oral examination of the applicants for promotion. The panel shall consist of three (3) persons of a supervisory capacity from an outside agency or agencies in the same field and of the same rank to which the applicant is aspiring. The chief examiner shall compile the grades of all applicants in strict compliance with procedures and percentages as set out below and shall deliver, in a sealed envelope, the scores of all applicants for promotion to the chairman of the board. The chief examiner shall not reveal to anyone the results of said tests other than in the manner set forth herein. If there are fewer than fifty (50) applicants for testing, the merit board may waive the requirements of this subsection and substitute other appropriate testing methods as determined by the board, but no testing method or the grading shall depart from or be inconsistent with the procedures and percentages set out below which shall be strictly followed in determining an applicant's eligibility for promotion.

- (5) Physical fitness for promotion shall be presumed unless certified to the contrary by the chief of police who shall supply the board with medical records of the disability.
- (6) At least ninety (90) days' notice shall be given before the promotional examination is conducted.
- (7) The grading of promotional tests shall be as follows: sixty percent (60%) for written examination; thirty percent (30%) for oral examination; one percent (1%) for each year in seniority in grade, not to exceed ten percent (10%). Seniority points shall be awarded for each year of service after five (5) full years of service. The results of the written and oral examinations shall be added to the seniority points available to each applicant in determining the applicant's final evaluated rating.

Related Opinions of the Attorney General:

See OAG 93-27 at KRS 78.435.

78.445 Disciplinary action by chief.

- (1) Any officer or employee may be removed, suspended, laid off, reduced in grade, or fined by the chief for any cause which will promote the efficiency of the service, but before any such action is taken by the chief against any officer or employee, the chief shall furnish the officer or employee concerned with a written statement of the reasons why the described action is taken. The officer or employee may be reduced, removed, suspended, laid off or fined from the date when such written statement of reasons is served upon him. Each officer or employee removed, suspended, laid off, reduced in grade, or fined, shall be allowed a period of ten (10) days within which he may file written answer to the charges and reasons which caused his suspension, removal, reduction or fine, which shall be made a part of the official records of the police department. No trial or examination of witnesses

shall be required in any such case except in the discretion of the chief. The chief shall likewise furnish a copy of the written charges and reasons for his action to the board.

- (2) Any citizen who makes written charges of misconduct, under oath, concerning the actions of any police officer hereunder shall present the charges to the chief of police, who shall investigate said charges. The chief of police shall determine what action, if any, shall be taken against the officer, subject to the limitations set out in this chapter. The citizen may appeal the determination of the chief of police to the board.

Related case law decisions:

See *Brown v. Jefferson County Police Merit Bd.*, at KRS 78.400

In the case of *Redmon v. McDaniel*, 540 S.W.2d 870 (Ky. 1976), after receiving a complaint, "McDaniel [Chief of Police] confronted Redmon and Blair separately regarding their conduct on the prior night. Both of them admitted their participation in the brawl and Redmon admitted to McDaniel personally that the story told by Dooley was exactly what happened and also that he, Redmon, was a participant in the disturbance. McDaniel testified that Redmon indicated that it was his desire to remain in the area of police work, and for this reason he allowed Redmon to resign. McDaniel indicated that he had already determined that Redmon would be terminated if he should refuse to resign. Redmon immediately prepared and executed a formal resignation which he submitted to McDaniel on that date. The resignation stated that it was to become effective on September 15, 1974. On August 29, 1974, Redmon attempted to withdraw his resignation. Redmon asserts upon this appeal that he was not afforded administrative and procedural due process in that his resignation of August 16 deprived him of a due process hearing before the Jefferson County Police Merit Board as required by KRS 78.445 and KRS 78.455.

The Supreme Court of Kentucky held that: "it is true that KRS 78.445 and 78.455 provide guidelines for the protection of police officers. However, they do not become effective barriers to an asserted unwarranted termination until such time as formal written charges have been preferred against the officer and served upon him. The jurisdiction of the Police Merit Board is also conditioned upon the filing of formal written charges. In this case the prevailing question is the voluntariness of the resignation for if, in fact, there is a good resignation then the safeguards contained in the statutes and the Merit Board rules and regulations do not become a factor in this proceeding".

In the case of *McDaniel v. Walp*, 747 S.W.2d 613 (Ky.App., 1987), "Walp was dismissed at the instance of then-Chief E.G. Helm, Jr., for failing to properly return funds recovered from a theft of Toohey's Auto Parts, a business in Bullitt County. Toohey made an oral complaint to the police department. Private citizens involved in discovery of the theft proceeds filed written statements as to the circumstances surrounding the

discovery and delivery of same to Walp. Chief Helm initiated an investigation. After a proper and full-blown hearing by the Merit Board, in which a representative of Toohey's testified under oath, Walp's dismissal was affirmed.

The Kentucky Court of Appeals stated that "We do not believe a fair reading of KRS 78.445 and 15.520 requires that disciplinary proceedings must necessarily emanate from a citizen's sworn complaint. It is true that disciplinary action may rest upon the sworn allegation of a complaining citizen. This is not, however, to preclude disciplinary action by departmental authority based upon initiation from within and upon any source of information.

In the case of Duvall v. Helm, 623 S.W.2d 234 (Ky.App., 1981) "E. G. Helm, Jr., in the official capacity of chief of the Jefferson County Police Department, suspended Jack Duvall, a member of the department, for a term of three days. Mr. Duvall, upon written request, was granted a review before the Jefferson County Police Merit Board. The action of the board resulted in the reduction/revocation of the chief's order and the imposition of a one-day suspension. Insofar as the action taken in regard to appellant, Mr. Duvall, has resulted in a one-day suspension, it is only necessary to determine if appellee, Chief E. G. Helm, has standing under the appeal statute as being "any person aggrieved," and can therefore maintain this appeal".

The Kentucky Court of Appeals opined: "We determine that the appeal, as in this case, is entirely statutory and that it is available to any party who comes within the statute granting the right. We express the view that doubts with respect to the right of appeal in borderline cases are to be resolved in favor of the appealing party. Chief Helm was a party to the initial proceedings below, and his interest appears from the record. The statute places the police chief in a representative/official capacity, and as such he enjoys the same right as other parties to prosecute an appeal, or review an order or decree of the board, insofar as it affects the acts of the office of the police chief injuriously".

78.450 Disciplinary action by board.

- (1) The board shall also have the right to remove, reduce, suspend, lay off, fine or discipline any officer or employee covered by the provisions hereof on written charges of misconduct preferred on its own initiative or the initiative of any citizen, but only after reasonable notice to the accused and after a complete public hearing at which the officer or employee accused shall have the right to be present and represented by counsel and confronted by all of the witnesses preferring the charges against him. Every such employee or officer shall be given the right within ten (10) days after charges are initiated by the board or a private citizen and before the public hearing prescribed herein, to file written answer to the charges preferred against him.

- (2) After full public hearing by the board, the board may retire in executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. In no case shall the board in executive session receive any further evidence or communication from any source whatsoever prior to reaching its determination and conclusion.
- (3) Before the board shall remove, reduce, suspend, lay off, fine or discipline any officer or employee covered by the provisions hereof, the charges against said officer must be presented to the officer in writing and shall be specific as to the nature of the charge or charges, giving specific, detailed information so as to allow said officer to be able to properly defend himself.

78.455 Action of chief or board final -- Exceptions -- Appeals to courts.

In all cases provided for in KRS 78.445 and 78.450, the action of the chief or of the board shall be final except in the following cases:

- (1) Every action in the nature of a dismissal, suspension, reduction, or fine made by the chief, shall be subject to review by the board at the request of any officer or employee affected by KRS 78.400 to 78.460, and the board shall give notice and hold a public hearing. After the public hearing, the board shall retire in executive session to discuss the evidence introduced at the hearing and make its determination and conclusion. While in executive session, the board shall not receive any further evidence or communication from any source prior to reaching its determination and conclusion. The board, while in executive session, may request and receive legal advice from board counsel on specific legal issues which may arise during deliberations. If a majority of the members of the board are of the opinion that the action of the chief is unjustified or unsupported by proper evidence, the order of the chief may be set aside and revoked by the board and the board may impose the penalty or punishment it may deem necessary and appropriate, if any.
- (2)
 - (a) Every action in the nature of a dismissal, suspension, reduction, or fine made by the board shall be final, except that any person aggrieved thereby may, within twenty (20) days after the rendition of the action, appeal to the Circuit Court of the county in which the board meets. The board shall be named respondent as the county police force merit board, and service shall be had on the chairman thereof. The appeal taken to the Circuit Court shall be docketed by the clerk as a civil action and shall be tried anew, as if no action had been rendered by the board.
 - (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to appeal to the Court of Appeals shall be the same as in civil action.

Related case law decisions:

See Brown v. Jefferson County Police Merit Bd. at KRS 78.400

See Duvall v. Helm at KRS 78.455

78.460 Board hearings to conform to due process of law -- Board may issue subpoenas, compel attendance of witnesses, and compel production of documents.

Procedural due process shall be afforded to all police officers by the board. The board shall inform any officer, promptly and in writing, of any charges brought against the officer by the board. The officer shall be given a prompt hearing by the board, have an opportunity to confront his accusers, and have the privilege of presenting the board with evidence. The board shall have the power to issue subpoenas attested in the name of its chairman, to compel the attendance of witnesses, to compel the production of documents and other documentary evidence, and so far as practicable, conduct the hearing within the Kentucky Rules of Civil Procedure. Upon a showing of proper need, the board shall issue subpoenas to compel the attendance of witnesses, or to compel the production of documents and other documentary evidence for the benefit of the officer or the chief at the request of the officer or the chief. Any officer who is not given a hearing within sixty (60) days of any charge placed shall be reinstated in full.

78.470 Collective bargaining authorized -- Strikes prohibited.

In any county in the Commonwealth of Kentucky, which has a population of 300,000 or more and, which has adopted the merit system, the county employees in the classified service as police may organize, form, join or participate in organizations in order to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection, and to bargain collectively through representatives of their own free choice. Such employees shall also have the right to refrain from any or all such activities. Strikes by said members of any such collective bargaining unit shall be prohibited at any time.

78.480 Proper subjects for bargaining.

In any county in the Commonwealth of Kentucky which has a population of 300,000 or more and which has adopted the merit system for its police force, the fiscal court may contract with representatives of the police employed by said county with respect to wages, hours, terms and conditions of employment, including execution of a written contract incorporating any agreement reached between the fiscal court and representatives of the police. The fiscal court shall not be required to bargain over matters of inherent managerial policy.

TAB 10

KRS CHAPTER 90

CHAPTER 90 CITY CIVIL SERVICE

Cities of the First Class

90.110 Definitions for KRS 90.110 to 90.230.

The following terms, as used in KRS 90.110 to 90.230, shall have the following meanings, unless the context clearly requires otherwise:

- (1) "Emergency appointment" means any appointment to any position subject to the provisions of KRS 90.110 to 90.230, which may be made only in the absence of an appropriate eligible list for the position and which may be made without competitive examination pending the establishment of an eligible list and which appointment shall not exceed the duration of the emergency and in no case to exceed ninety (90) days in any one (1) fiscal year.
- (2) "Probationary appointment" means an appointment to any position subject to the provisions of KRS 90.110 to 90.230, which shall be made in accordance with the provisions of KRS 90.180 and which shall not be less than six (6) months nor more than one (1) year in duration.
- (3) "Regular appointment" means an appointment to a position subject to the provisions of KRS 90.110 to 90.230 made after an employee has served a probationary period in a manner deemed satisfactory to the appointing authority.
- (4) "Director" means the personnel director, as provided for in KRS 90.140.
- (5) "Position" means every place of employment in the classified service hereunder including office.
- (6) "Employee" means any person in the classified service hereunder.
- (7) "Classified service" means all positions in cities of the first class within the jurisdiction of the board, and within the purview of KRS 90.110 to 90.230.
- (8) "Board" means the civil service board created hereunder.
- (9) "Appointing authority" means the officer, board, commission, department, agency, person or group of persons, having the power of appointment to and removal from positions in the classified service as provided for in KRS 90.110 to 90.230.
- (10) "Competitive examination" shall include consideration and rating of any or all of the following qualifications of applicants: Education, training, experience, general adaptability, special aptitude, physical fitness, knowledge, skill, personality, character, and such other qualifications as may be deemed necessary for the satisfactory performance of the duties of the respective positions.

- (11) "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions as provided for in KRS 90.110 to 90.230.
- (12) "Service ratings" means the evaluation of the efficiency and general worth of employees in positions subject to the provisions of KRS 90.110 to 90.230 as determined by the appointing authority.
- (13) "Dismissal" means the discharge of an employee by the appointing authority.
- (14) "Lay-off" means the separation of an employee from the classified service because of a reduction of force owing to decreased work or decreased funds in the department, commission, board or agency in which the employee has been employed.
- (15) "Class" or "class of positions" means a position or group of positions subject to the provisions of KRS 90.110 to 90.230 sufficiently similar in duties, responsibilities and qualification requirements to be designated by the same title and placed within the same salary range.
- (16) "Reinstatement" means the reappointment of a person who formerly held a position, subject to the provisions of KRS 90.110 to 90.230, to such former position or to any other position in the same class.
- (17) "Transfer" means a change by an employee from one (1) position to another position within the same class.
- (18) "Promotion" means a change from a position in a lower class to a position in a higher class involving an increase in responsibility or a change in title.
- (19) "Demotion" means a change from a position in a higher class to a position in a lower class involving a decrease in responsibility or a change in title.
- (20) "Suspension" means the separation of an employee from the service for a temporary or fixed period of time, which separation is inflicted upon the employee by his appointing authority, as a disciplinary measure under the rules established by the board.
- (21) "Public hearing" means such as may be given after public notice of at least five (5) days, so that any person or persons may have an opportunity to appear before the board and be heard on the matter involved.

90.150 Offices, positions, and places of employment included in classified service.

- (1) The classified service covered by KRS 90.110 to 90.230, and hereby placed under the jurisdiction of the board, includes all offices, positions, and places of employment, except as herein provided, in the following departments and agencies in the service of the city, to wit: the department of public safety, the department of public health, the department of public welfare, and the civil service board. If any of such offices, positions or places of employment are transferred to or combined or consolidated with any other department or agency of or serving the city, the offices, positions or places of employment shall continue to be covered by KRS 90.110 to 90.230. The classified service also includes all other offices and positions and places of employment in other departments or agencies of the city or serving the city to which the classified service may be hereafter extended pursuant to the provisions of KRS 90.210, or any other law.
- (2) The following offices, positions, and places of employment, in the departments and agencies hereinabove specifically named, are excluded from the classified service, to wit:
 - (a) The director of safety and the following positions in that department, to wit: the director of safety's staff, including, but not limited to assistants and his private secretary, the chief of police and his private secretary, assistant chief of police, chief of detectives, chaplain for the police department, chief of firefighters and his private secretary, assistant chief of firefighters, chaplain for the fire department; superintendent and animal catchers, and caretakers, in the division of city pound; supervising inspector of weights and measures, and inspector of weights and measures, and deputy inspector, in the division of weights and measures.
 - (b) The director of health and the following positions in that department, to wit: private secretary, kitchen helpers, cleaners, waitresses, housemaids, janitresses, laundresses, hospital resident medical staff, university visiting staff, student nurses, bona fide university students.
 - (c) The director of welfare and the following positions in that department, to wit: private secretary, janitors, cleaners, laundresses, night watchman, truck drivers, kitchen helpers, janitresses, park laborers, bona fide university students.
 - (d) Members of the civil service board and the personnel director.
- (3) The offices, positions, and places of employment excluded by paragraphs (a), (b), (c) and (d) of subsection (2) from the classified service may be placed in the classified service, in accordance with the provisions of KRS 90.210, except that the offices or positions of director of safety including his staff, chief of police and his private secretary, assistant chief of police, chief of detectives, chaplain for the police department, chief of firefighters and his private secretary, assistant chief of firefighters, chaplain for the fire department, director of health, director of welfare, and members of the civil service board shall not be placed in the classified service.

- (4) Any classified employee in the department of safety, who accepts an appointment and qualifies as chief of police or his private secretary, assistant chief of police, chief of detectives, chaplain for the police department, chief of firefighters or his private secretary, assistant chief of firefighters, or chaplain for the fire department, shall be deemed to have received a leave of absence from the classified service for and during the incumbency of any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him the same classification and rank which he held prior to his appointment.

90.160 Rules and regulations governing classification, tests, eligible lists, probation, reinstatement, promotion -- Other rules.

- (1) The board shall, after public notice and hearing, make, promulgate, and if and when necessary, amend, rules and regulations for the appointment, transfer, laying-off, reinstatement, deductions from pay, leave of absence, promotion, demotion, dismissal, and suspension, of all employees of the city in the classified service within the purview of KRS 90.110 to 90.230, including those who may hereafter be placed in the classified service pursuant hereto, and for the classification of such employees for appointment, promotion and transfer, and shall report its proceedings and rules to the mayor, legislative body, the director of public welfare, the director of public health, and the director of safety of the city. Such rules shall, among other things, provide:
 - (a) For the standardization and classification of all offices, positions and employment in the classified service and the classification thereof into groups and subdivisions to be based upon and created according to the respective duties and responsibilities thereof, and shall be so arranged as to promote the filling of the higher grade as far as practicable by promotion.
 - (b) For open competitive tests to ascertain the relative fitness of all applicants for appointment to said offices, positions and places of employment in the classified service within the purview of KRS 90.110 to 90.230, including those which may hereafter be placed in the classified service pursuant hereto, and such tests shall be practicable and relate to matters which will fairly measure the relative fitness of candidates to discharge the duties of the positions or offices or places of employments to which they seek appointment. Notice of such tests shall be given by publication pursuant to KRS Chapter 424 and by posting notices in the city hall.
 - (c) For the creation of eligible lists upon which shall be entered the names of successful candidates in the order of their standing through examination; and for the filling of places in the classified service by the appointing authorities who shall select from not more than three (3) candidates graded highest on the appropriate eligible list.

- (d) For a period of probation not exceeding twelve (12) months nor less than six (6) months, before an appointment or employment is made a regular appointment.
 - (e) For reinstatement on the eligible list of persons who, without default or delinquency, are separated from the service.
 - (f) For promotion from the lower grades to the higher based on records of efficiency and seniority to be furnished by the appointing authority and kept by the board, or upon competitive promotion tests, or both.
- (2) The enumeration of the foregoing subject matter of rules and regulations is not exclusive, and the board may make and promulgate such other reasonable rules and regulations as are necessary or desirable to the enforcement of and not inconsistent with KRS 90.110 to 90.230.

90.180 Appointments to positions in classified service -- Probationary appointments.

- (1) All appointments to positions subject to the provisions of KRS 90.110 to 90.230 shall be made solely on the basis of merit and fitness, to be determined by competitive examinations, except in the case of emergency appointments which may be made only in accordance with the definition given in KRS 90.110; provided that all original appointments, except emergency appointments as defined in KRS 90.110, shall be probationary appointments for a period of not less than six (6), nor more than twelve (12), months, after which probationary period regular appointments shall be given to all probationary employees who are deemed to be satisfactory by the respective appointing authority.
- (2) Except in the case of emergency appointments as defined in KRS 90.110, all appointments to positions subject to the provisions of KRS 90.110 to 90.230 shall be made by appointing authorities only from an eligible list certified by the personnel director as qualified and eligible for appointment from an appropriate eligible list as defined in KRS 90.110; provided however, that all employees holding positions subject to the provisions of KRS 90.110 to 90.230 on the effective date thereof who were holding positions in classified service under provision of previous acts, shall be considered as having satisfied hereunder all of the qualifications for obtaining and holding such appointments as they then had, and further provided that all employees holding positions subject to the provisions of KRS 90.110 to 90.230, on the effective date thereof, and who were not holding positions in classified service under provisions of previous acts, shall be considered as having satisfied hereunder all of the qualifications for obtaining and holding original appointments under KRS 90.110 to 90.230, and shall be considered as having been given probationary appointments, as defined in KRS 90.110, as of the effective date thereof.

90.190 Dismissals and demotions.

- (1) Any suspension in excess of ten (10) days, dismissal or demotions of employees in positions subject to the provisions of KRS 90.110 to 90.230 may be made only by the appointing authority upon the filing of written statements of the reasons of such suspension in excess of ten (10) days, or dismissals or demotions with the board, provided that copies of all such statements shall be furnished to the employees so suspended, dismissed, or demoted, on or before the effective date of such suspension, dismissal, or demotion, provided further that employees holding probationary appointments may be dismissed without the appointing authority being required to furnish either the board or the suspended, or dismissed, or demoted employee with a written statement of the reasons for such suspension, dismissal, or demotion. Any employee who has been suspended in excess of ten (10) days, dismissed, or demoted holding a regular appointment, shall be entitled, upon written demand, to a public hearing by the board, at which time he shall have the right to introduce evidence in his own behalf, and to be represented by counsel.
- (2) The board shall investigate and determine the justification for all suspensions in excess of ten (10) days, or dismissals, or demotions, reported, or complained of, according to the provisions of this section. The board shall keep an accurate record of its proceedings under this section, including evidence presented at any public hearing. The board's order and findings shall be final subject to the right of appeal as set out in subsections (3) and (4) of this section. Enforcement of the suspension, dismissal or demotion shall not be suspended pending any proceeding or appeal provided in this section. Copies of the order and findings of the board shall be immediately delivered to the mayor, appointing authority, and to the suspended, dismissed, or demoted employee.
- (3) Within thirty (30) days after the order of the board has been entered under subsection (2) of this section, any employee, who has been aggrieved by the order of the board, or the mayor or the appointing authority may appeal to the Circuit Court in the county in which the city is located in the following manner:
 - (a) Upon request in writing by the person making the appeal, and the payment of costs therefor, the secretary of the board shall provide a certified copy of the record and the findings of that body to the appellant. The appeal shall be prosecuted by filing a complaint in Circuit Court and shall otherwise be in accordance with the Rules of Civil Procedure. Upon the record being filed by the appellant, the case shall be docketed in the Circuit Court and tried de novo.
 - (b) If the secretary fails to provide a certified copy of the record to the appellant within thirty (30) days after the request is made, then the aggrieved person may file an affidavit in that court setting out as fully as possible the charges, together with a copy of the board's findings and a statement that demand for the transcript had been made of the secretary more than thirty (30) days prior to the

filing of the affidavit. Upon filing of this affidavit in the Circuit Court, the case shall be docketed in that court and the court may compel the filing of the transcript by the secretary by entering proper mandatory order, and upon failure of the secretary to do so, he shall be liable to fine and imprisonment for contempt. Such appeal shall have precedence over other business and be determined speedily.

- (4) An appeal will lie from the judgment of the Circuit Court to the Court of Appeals as in other cases, in any controversy arising under this section.
- (5) Nothing in KRS 90.110 to 90.230 shall permit the suspension, dismissal, or demotion of any employee subject to the provisions of KRS 90.110 to 90.230 on account of religious faith, race, color, creed, or political affiliation.

90.200 Investigations by board -- Power to obtain evidence -- General powers of board -- Reports of director.

- (1) The board may make investigations on its own initiative, or at the direction of the mayor or legislative body of the city, or upon the petition of an employee in the classified service, or of any person on a list kept by the board, concerning the enforcement or violation of or operation under KRS 90.110 to 90.230. In the course of any investigation under the provisions of KRS 90.110 to 90.230, each member of the board shall have the power to administer oaths, and the board is authorized and empowered to subpoena and require the attendance of witnesses and the production by them of books, papers, records and other documentary evidence pertinent to such investigation. In the event that any person should fail or refuse to appear under such subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the board may report to the Circuit Court or any judge thereof, such failure or refusal, and apply for a rule, and the Circuit Court, or any judge thereof, may, on such application of the board, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court.
- (2) The board shall perform such other functions as may relate to the efficiency of the personnel under its jurisdiction, including the maintenance of the personnel classification plan, the administration of service ratings, attendance records, training programs, promotions, transfers, lay-offs, suspensions, reinstatements and related activities, and shall prepare appropriate rules for the administration thereof, but such enumeration is not exclusive of other proper functions or activities of the board.
- (3) The board shall receive, review and correct, if necessary, and transmit promptly to the mayor and the legislative body of the city, the annual report of the director. Such report of the director may be supplemented by any additional comment,

criticism or suggestions for the more effectual accomplishment of the purposes of KRS 90.110 to 90.230, that the board may care to submit.

90.220 Political discrimination and political activity prohibited; dismissal for violation

- (1) Persons holding positions in the classified service shall not be discriminated against in any way because of their political or religious opinions or affiliations or because of their exercise of their right to vote as they please.
- (2) No person in the classified service, and neither the personnel director nor any member of the board, nor the chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters, shall, directly or indirectly, give, solicit, receive, or remit, any assessment, subscription, or contribution, to or for any political party or any candidate for public office, or in any manner be concerned therewith; nor shall any such person be a member of any campaign committee or governing committee of any political organization nor an officer in either; nor shall any such person be an election officer or work at the polls on election day, or participate in the purgation or registration of voters, provided, however, nothing herein shall prevent any such person from freely expressing his or her views as a citizen or from casting his or her vote in any election.
- (3) Any such person who shall violate this section shall be summarily dismissed from the service by the appointing authority (or if a member of the board, by the mayor), and may not be employed in any service of the city, classified or unclassified, for a period of one (1) year next thereafter; provided however, that should the appointing authority fail or refuse to so dismiss, the board (except when a member thereof is charged with violation of this section) shall conduct a hearing, which the accused person may attend with counsel; if the board find the accused guilty of violation of this section, the board shall dismiss such violator, with the consequent disqualification. Such action of the board is final.

Cities of the Second and Third Classes

90.300 Definitions for KRS 90.310 to 90.410; application

- (1) In KRS 90.310 to 90.410, unless the context requires otherwise:
 - (a) "Administrative or directorial position" means the head of a department of municipal government.
 - (b) "Appointing authority" means the officer, commission, board or body having the power of appointment or removal in any office, department, commission, board or institution.

- (c) "Civil service" means the offices and positions of trust or employment in the service of the city not specifically excluded by KRS 90.310 to 90.410 or by ordinance of the city as provided in KRS 90.310.
 - (d) "Commission" means the board of civil service commissioners as established under KRS 90.310.
 - (e) "Dismissal" means the discharge of an employee.
 - (f) "Employee" means any person employed in the conduct of municipal affairs, but the term shall not include the mayor or city manager, an administrative or directorial position established for cities of the second or third class, except that the legislative body, no later than December 31, 1982, may elect by ordinance to designate persons in administrative or directorial positions as employees, however, any person employed in an administrative or directorial position on July 15, 1982, shall continue to be covered by the provisions of KRS 90.310 to 90.410 for the time as he is employed in a position notwithstanding the removal of the position from the definition of "employee" and in cities of the second class it shall not include the offices of the board of health, members of the planning and zoning commission, the board of trustees of the public library, members of the housing authority, municipal hospital commission or the trustees, members or corresponding officers of similar boards or commissions of cities of the second class, persons employed on temporary and special projects or to persons whose regular employments with the city are seasonal and are less than nine (9) months in any one (1) year, persons in a class of employees designated by ordinance to be non-civil-service positions, and the city clerk or city assessor of a city of the second class operating under the commission form of government.
 - (g) "Pension fund" means the moneys derived from the employees and the levy of a special tax, either or both, or any other sum derived from any other source, to be used for the retirement of employees after the prescribed years of service and for the benefit of disabled employees, and surviving spouses and dependent children in the case of death of an employee within the scope of his employment according to the terms of KRS 90.310 to 90.410 and the ordinance of the city.
- (2) The provisions of KRS 90.310 to 90.410 are independent of and do not affect the laws governing the police and fire departments, nor their pension funds, in cities of the second and third classes.

90.310 Adoption of civil service ordinance; civil service commission

- (1) Any city of the second or third class may elect to operate under KRS 90.310 to 90.410, and, by ordinance, create a civil service commission which shall hold examinations as to the qualifications of applicants for municipal employment within the several departments of the city that are designated by ordinance. In all cities of the second class, and in cities of the third class, the city may, by

ordinance, classify employees and designate the class of employees it desires to include.

- (2) The mayor, subject to the approval of the city legislative body, shall appoint at least three (3) but no more than five (5) persons who shall constitute the civil service commission of that city. Each appointee shall be at least thirty (30) years of age and not related by either blood or marriage to the mayor or any member of the city legislative body. The appointees shall originally be appointed one (1) for a term of three (3) years, one (1) for a term of two (2) years and all remaining appointments shall be for a term of one (1) year, and the successors to these appointees shall be appointed in like manner, each for a period of three (3) years and until his successor is appointed and qualified. A vacancy shall be filled for the unexpired term in the same manner as original appointments. At the time of any appointment, if the mayor elects to appoint only three (3) commissioners, not more than two (2) commissioners shall be adherents of the same political party. If the mayor elects to appoint more than three (3) commissioners not more than three (3) commissioners shall be adherents of the same political party. The appointee originally appointed for the term of three (3) years shall be secretary of the commission. Each appointee shall qualify by taking an oath of office as required by law. The salaries of the members of the commission may be fixed by the city legislative body.
- (3) If the appointing authority of any city fails to appoint a civil service commission within thirty (30) days after he has the power to so appoint or after a vacancy exists, the mayor pro tem shall make the appointment and the appointee shall hold office until the expiration of the term and until his successor is appointed and qualified.
- (4) The civil service commission shall make and enforce rules, not inconsistent with the provisions of KRS 90.310 to 90.410 or the ordinances of the city, for examinations and registrations therefor.

90.320 Examinations; certifications; preference points; eligible list

- (1) The civil service commission shall prescribe and propound such examinations as are proper, commensurate with vacant positions within the various departments of the city, according to classification prescribed by ordinance, shall set such times and places for holding examinations as may be proper and shall give public notice of examinations by publication pursuant to KRS Chapter 424.

- (2) The civil service commission shall, as soon after examinations as is practicable, certify to the mayor or other appointing authority a list of the applicants so examined, with the one (1) having the highest average ranked first and all others ranked numerically according to the result of the examination.
- (3) Any honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment, and who is an applicant for any municipal civil service position, and a registered voter of that municipality, shall be entitled to a five percent (5%) increase on his examination score. Any Red Cross nurse who served during the period of hostilities between the United States and the Central Powers in World War I and between the United States and Japan and Germany in World War II, and who is a registered voter of that municipality, shall be entitled to the same percentages. Such percentages shall be added to examination scores only if the score is determined by the civil service commission to be a passing score and after verification of the required service.
- (4) The civil service commission of cities of the second class shall maintain an eligible list of not less than three (3) for each position to be filled.
- (5) The appointing authority may designate certain civil service positions and prescribe that for such positions the examinations shall first be given exclusively to current employees; provided, however, that if less than three (3) employees with a minimum of two (2) years seniority achieve a passing grade, the examination shall be held in accordance with subsection (1) of this section.

90.330 Qualifications of applicants

- (1) The civil service commission shall examine all applicants as to their physical and mental qualification for the particular classification wherein they seek employment. To be eligible for examination a person must not be less than eighteen (18) nor have passed his or her forty-sixth birthday, a law-abiding citizen of sobriety and integrity, and must be able to read and write and understand the English language; provided, however, that any present employee who is over forty-five (45) years of age and who is otherwise qualified shall be eligible to take any promotional examinations.
- (2) Except for those members whose qualifications are determined under KRS95.440, no person shall be appointed to a position under civil service until that person is a resident of the Commonwealth of Kentucky.
- (3) Any city legislative body that operates under this chapter may by ordinance require persons appointed to civil service positions to be a resident of the county in which the city is located.

90.340 Present employees

Employees who at the time the provisions of KRS 90.310 to 90.410 are adopted by any city of the second or third class have been in the employ of that city for one (1) year last past shall not be required to stand an original examination, and shall be eligible for all the benefits provided by KRS 90.310 to 90.410.

90.350 Appointments; promotions

- (1) The appointing authority shall make all civil service appointments, and the appointment shall be made only from the lists of applicants certified to him by the civil service commission after examination. Appointments shall be made only by the selection of one (1) of the three (3) holding the highest averages in the particular class and grade wherein the vacancy exists, except as provided in subsection (6) of this section.
- (2) Whenever it is imperative to fill a vacancy in classified civil service before the commission can certify a list of as many as three (3) persons eligible for appointment after competitive examination, the appointing authority shall nominate a competent person from the same class or next lower rank to the commission for noncompetitive examination, and if certified by the commission as qualified after the noncompetitive examination he may be appointed provisionally to fill the vacancy until an appointment can be made after competitive examination. This provisional appointment shall continue only until a regular appointment can be made from the eligible list prepared by the commission, which eligible list shall be prepared within thirty (30) days after a vacancy occurs in cities of the second class, or within ninety (90) days after vacancy in cities of the third class.
- (3) In case of great emergency and when no one upon the eligible list or by promotion from a lower rank is available, an appointment may be made by the appointing authority without examination, but in no case shall such appointment continue longer than thirty (30) days in cities of the second class, or sixty (60) days in cities of the third class, and in no case shall successive appointments be made of the same person, or other persons, to such vacancy.
- (4) Temporary appointments made necessary by reason of illness or disability of regular employees shall continue only during such period of disability.
- (5) The death of an employee shall not authorize an appointment without examination in cities of the second class.

- (6) Whenever, from any cause, there shall be a vacancy in any of the classified services, the employee in said classification ranking next highest in seniority, if he chooses, shall succeed to and fill said vacancy, unless upon charges made by the city that said employee is not qualified to fill said vacancy, and after notice and upon trial to determine his qualifications in the same manner as is now required for the dismissal, suspension or reduction in grade or pay of an employee, it be established by the city that said employee has not the necessary qualifications to enable him to discharge the duties of the office or position in which the said vacancy occurs. Provided that in case of a vacancy in the classified service, where peculiar and exceptional qualifications of a particular professional or educational character are required, upon satisfactory evidence that for reasons stated in writing by the appointing authority, competitive examination in such case has failed to provide an eligible list; the commission may suspend the provisions requiring competitive examination under civil service.
- (7) Where the service to be rendered by an appointee in the classified service is for a temporary period not to exceed thirty (30) days in cities of the second class, or sixty (60) days in cities of the third class, and the need of such service is imperative, the appointing authority may select for that temporary service any person on the list of those eligible for permanent appointment. Successive temporary appointments to the same position shall not be made under this provision. The acceptance or refusal by an eligible applicant of a temporary appointment shall not affect his standing on the register for permanent employment, nor shall temporary service be counted as part of the probationary service in case of subsequent appointment to a permanent position.
- (8) No person shall be certified by the commission from an eligible list more than four (4) times to the same appointing authority for the same or similar position.
- (9) The appointing authority may provide that all appointments for initial permanent employment may be probationary appointments for a period of not more than twelve (12) months, after which probationary period regular appointments shall be given to all probationary employees who are deemed to be satisfactory by the respective appointing authority.

90.360 Dismissal, suspension, or reduction; exclusions from classified service

- (1) No employee in the classified service of a city of the second or third class shall be dismissed, suspended, or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination, or violation of law involving moral turpitude, or, in a city of the third class, violation of any rule adopted by the city legislative body or civil service commission.

- (2) Any person may prefer charges in writing against any employee by filing them with the mayor or other appointing authority who shall communicate the charges without delay to the civil service commission of the city. The charges must be signed by the person making them and must set out clearly each charge. The appointing authority shall, whenever probable cause appears, prefer charges against any employee whom he or she believes guilty of conduct justifying his or her removal. Upon the filing of charges, the clerk of the civil service commission shall notify its members and serve a copy of the charges upon the accused employee with a statement of the date, place, and hour at which the hearing of charges will begin, this hearing not to be held within three (3) days of the date of the service of charges upon the accused employee. The day on which the charges are served on the accused employee shall count as one (1) of the days of notice. The person accused may in writing waive the service of charges and demand trial within three (3) days after they have been filed with the clerk of the civil service commission.
- (3) Upon the hearing, the charges shall be considered traversed and put in issue, and the trial shall be limited to the issues presented by the written charges.
- (4) The civil service commission shall have the power to summon and compel attendance of witnesses at all hearings by subpoena issued by the clerk of that body and served upon the witnesses by members of the police department of the city or any officer authorized to serve subpoenas. If any witness fails to appear in response to a summons or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the commission, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the District Court. The accused employee shall have the right to have subpoenaed any witnesses he or she may desire, upon furnishing their names to the clerk. As many as ten (10) subpoenas may be served on the request of the accused employee without charge but each additional subpoena requested by him shall be issued by the clerk and served by the police department only upon payment of fifty cents (\$0.50) to the city clerk by the employee. The action and decision of the civil service commission on the charges shall be reduced to writing and kept in a book for that purpose and the written charge shall be attached to the book containing the body's decision.
- (5) In cases where the head of the department or the appointing authority has probable cause to believe an employee has been guilty of conduct justifying his removal or punishment he shall immediately suspend that employee from duty or from both pay and duty pending trial and the employee shall not be placed on duty or allowed pay thereafter until the charges are heard by the civil service commission.

- (6) The civil service commission shall punish any employee found guilty by reprimand or a suspension for any length of time not to exceed six (6) months, or by reducing the grade, if the employee's classification warrants, or by combining any two (2) or more of these punishments, or by dismissal. No employee shall be reprimanded, removed, suspended, or dismissed except as provided in this section.
- (7) (a) Any of the following offices, positions, and places of employment, in the police and fire departments of a city of the second or third class, may be excluded from the classified service:
 - 1. Chief of police;
 - 2. Assistant chief of police;
 - 3. Chief of firefighters; and
 - 4. Assistant chief of firefighters.
- (b) Any classified employee in either department who shall accept an appointment and qualify as chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him or her the same classification and rank which he or she held prior to his or her appointment.

90.370 Action in Circuit Court

- (1) Any employee of the city found guilty by the civil service commission of any charge as provided by KRS 90.360 may bring an action in the Circuit Court of the county in which the city is located to contest the action of that body.
- (2) Upon request in writing by the accused, and the payment of costs therefor, the clerk of the civil service commission shall file a certified copy of the charges and the judgment of that body in the Circuit Court. Upon the transcript being filed the case shall be docketed in the Circuit Court and tried as an original action.
- (3) If the clerk fails to certify the transcript to the Circuit Court within five (5) days after the request is made, then the aggrieved person may file an affidavit in that court setting out as fully as possible the charges made at the time of trial and judgment, together with a statement that demand for the transcript had been made of the clerk more than five (5) days prior to the filing of the affidavit. Upon filing of this affidavit in the Circuit Court, the case shall be docketed in that court and the court may compel the filing of the transcript by the clerk by entering proper mandatory order, and upon failure of the clerk so to do, he shall be liable to fine and imprisonment for contempt. Such action shall have precedence over other business and be determined speedily.

90.380 Number of employees; salaries; protection from dismissal, suspension, or reduction; abolishment of office or position; reinstatement

- (1) The city legislative body shall fix by ordinance the number and classification of city employees, and the salaries for each classification. When the number of employees and their classification has been fixed by ordinance, no employee shall be dismissed, suspended, or reduced in grade or pay for any reason except that set out in KRS 90.360.
- (2) Provided, further, that: Whenever in the exercise of a reasonable discretion, it shall be the judgment of the legislative body of the city that economic necessity requires it, or that there is no longer a need for a particular office or position to exist, the board of commissioners may abolish said office or position and any officer or employee occupying said office or position may be laid off or suspended until and if such office or position is re-created or reestablished. The abolition of any office or position must not be a subterfuge to effect another purpose, but must be actual and bona fide and must not amount to the mere alteration, modification, or abolition of title only.
- (3) Should any officer or employee conceive that he has been aggrieved by the abolition or the proposed abolition of said office or position, he may, at any time within ninety (90) days, file a petition in equity in the Circuit Court of the county wherein the city is located, stating his reason why the position or office has not been fairly abolished, or why it should not be abolished, and upon issue joined thereon by the city, the burden shall be on the latter to establish the necessity for and the good faith of the city in abolishing said office or position. The right to abolish and the right to have the office or position re-created shall be determined as other equitable actions are determined.
- (4) If the office or position is re-created or reestablished within five (5) years, then any person who was deprived of his office or position shall be restored to the office or position he formerly held or occupied in the order of his seniority if he shall elect to do so, and the city shall advise said officer or employee at his last known address and advertise pursuant to KRS Chapter 424, that the office or position has been re-created or reestablished.

90.390 Prohibition of political activity

- (1) No person shall be appointed to any position because of political partisan service rendered by him or his family, or because of political sentiment or affiliation, nor shall any person be dismissed or reduced in grade because of any political opinion.

- (2) No employee of a city of the second class shall coerce or persuade another, or in any way actively participate in any election, or cause others to do so.

TAB 11

KRS CHAPTER 95

CHAPTER 95 CITY POLICE AND FIRE DEPARTMENTS

General Provisions:

95.015 Rights and duties of police and firefighters

Members of the police and fire departments in cities and urban-county governments shall abide by and adhere to the rules, regulations and laws set forth by the Kentucky Revised Statutes, and the legislative body of the city in which they are employed, provided, that no such rule, regulation or law shall apply that alters, abridges or otherwise restricts the constitutional rights of said members and said members, except when on duty, shall not be restrained from exercising their rights and privileges or from entering into any endeavor enjoyed by all other citizens of the city in which they reside.

Related case law decisions:

In *Puckett v. Miller*, 821 S.W.2d 791 (Ky.,1991), the Kentucky Supreme Court was asked to review a 1983 Lexington-Fayette Urban County Council decision that approved an ordinance which directed the Division of Police to promulgate and enforce certain regulations which restricted the rights of police officers to engage in off-duty employment. "In general and for purposes of discussion, these regulations provide that (a) officers wishing to become or who are currently engaged in off-duty employment must obtain prior written approval of the Chief of Police, (b) employment is prohibited in a job which requires the officer to sell, dispense or serve alcoholic beverages, (c) employment as a bouncer or security guard is prohibited in establishments which have as their primary business the sale of alcoholic beverages, (d) employment is prohibited for employers with a reputation for involvement in criminal activity, (e) Workers' Compensation and general liability insurance is mandatory if the officer's off-duty employment may require the use of police authority, and (f) indemnification of the Urban County Government is required for claims arising as a result of off-duty employment".

The appeal was made by certain officers of the Lexington-Fayette Urban County Police Force, who challenged the regulations as being in violation of KRS 95.015 and KRS 61.310(4) and the Fourteenth Amendment to the Constitution of the United States and Section 2 of the Constitution of Kentucky.

The Court held that "It is widely recognized that the rights of public employees may be abridged in the interest of preventing conflicts with official duties or promoting some legitimate interest of the governmental employer... this Court recognized the right of cities to make and enforce regulations for the management of a police department. The law is well settled that when a governmental employer has a rational basis for its regulation which is related to a legitimate objective and the restriction on personal liberty does not involve a fundamental right, the regulation will not be invalidated as a violative of the Fourteenth Amendment and Section 2".

The Court upheld all of the ordinance except the provision requiring officers to obtain prior written approval of the Chief of Police by stating “Our review of the regulation which confers a right of prior approval on the Chief of Police leads directly to the conclusion that arbitrary power has been granted. The regulation must be invalidated”.

95.017 Rights of uniformed city or county police or fire employees regarding political activity

Uniformed employees of any city or county police or fire department, while off duty and out of uniform, shall be entitled to:

- (a) Place political bumper stickers on their privately-owned vehicles;
- (b) Wear political buttons;
- (c) Contribute money to political parties, political candidates and political groups of their choice;
- (d) Work at the polls on election days;
- (e) Aid in registration or purgation of voters;
- (f) Become members of political groups; and
- (g) Hold office in political groups and carry out the mandates of that group.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to political activity of public employees, summarized below:

OAG 81-339 “The provisions of KRS 95.017 supersede and modify provisions of KRS 90.220 relating to political activity on the part of police and firemen”.

OAG 81-230 “City personnel policy prohibiting members of police and fire departments from engaging in political activity violates the statutes permitting same during off-duty hours”.

OAG 80-536 “Since KRS 95.017(g) permits a police officer to hold office in political groups and carry out the mandate of those groups, such police officer can hold a political party position”.

OAG 93-27 “A county police officer under a statutory county police merit system may be a candidate for public office while so employed, but may not campaign while in uniform, and may not, whether on duty or off, solicit or receive, directly or indirectly, contributions for any political party or candidate for public office”.

OAG 85-34 “City police and firemen who are covered under the Civil Service Act, KRS 90.220, cannot become candidates for public office”.

OAG 94-33 “A police officer who is covered under county police merit provisions and serves as the campaign manager, secretary, or treasurer for a candidate might be in violation of KRS 78.435(1)”.

95.019 Chief of police and police force to have common law and statutory powers of constables and sheriffs

- (1) The chief of police and all members of the police force in cities of the first through fifth classes shall possess all of the common law and statutory powers of constables and sheriffs. They may exercise those powers, including the power of arrest for offenses against the state, anywhere in the county in which the city is located, but shall not be required to police any territory outside of the city limits.
- (2) The chief of police and all members of the police force in cities of the sixth class shall possess all of the common law and statutory powers of constables and sheriffs. They may exercise those powers, including the power of arrest for offenses against the state, only within the corporate boundaries of the city and within the boundaries of any real property owned by the city which is located outside of its corporate boundaries.
- (3) The chief of police and all members of the police force in all cities shall be entitled to the same fees, and the same remedies for collecting them, that are allowed to sheriffs and other officers for similar services, but all fees shall be paid into the city treasury.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to statutory powers, summarized below:

OAG 82-393 “Police officers of a fifth-class city have the same power of arrest for offenses against the state as a sheriff. However, these police officers have no authority to arrest for offenses against county ordinances. (Annotation from former KRS 95.786.)”

OAG 80-146 “A police officer of a fifth-class city, who has the statutory authority to make an arrest anywhere in the county where the city is located, has not only the authority but the duty to make an arrest for a misdemeanor committed in his presence in the county, regardless of whether he is on-duty or off-duty. (Annotation from former KRS 95.786.)”

Cities of the First Class:

95.210 Police, exempt from civil process

While actually on duty no member of the police force shall be liable to arrest on civil process or to serve with subpoenas from civil courts.

Cities of the Second and Third Classes and Urban-County Governments:

95.435 Custody and disposition of property taken by the police department

- (1) The police department in cities of the second class, and urban-county government shall take charge of property, within their jurisdiction, alleged to be or suspected of being the proceeds of crime, property taken from the person of a prisoner, lost or abandoned property taken into the custody of any member of the police force or criminal court, and property taken from persons supposed to be insane, intoxicated or otherwise incapable of taking care of themselves. The officer or court having custody of such property shall as soon as practicable deliver it into the custody of the police department.
- (2) All such property shall be particularly described and registered by the police department in a book kept for that purpose, containing the name of the owner, if ascertained, the place where found, the name of the person from whom taken, with the general circumstances, the date of its receipt, the name of the officer recovering the property, the names of all claimants thereto, and any final disposition of the property. The police department shall advertise the property pursuant to KRS Chapter 424 for the information of the public as to the amount and disposition of the property.
- (3) If any property in the custody of the police department is desired as evidence in any criminal court, such property shall be delivered to any officer who presents an order to that effect from the court. Such property shall not be retained in the court but shall be returned to the police department.
- (4) All property except firearms that remains in the custody of the police department for three (3) months, without any lawful claimant thereto, may be sold at public auction in a suitable room designated for that purpose after having been advertised pursuant to KRS Chapter 424. The proceeds of such sales shall be paid into the police and firefighters' pension fund of said city or urban-county government. Firearms shall be transferred to the Kentucky State Police within ninety (90) days of abandonment, confiscation, release of the weapon as evidence, or forfeiture by a court, whichever occurs later.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to property finders, summarized below:

OAG 84-85 “The finder of property that is placed in the custody of the police department may be considered a "legal claimant" under this statute and is entitled to the property unless another claimant has filed a better claim on the property”.

95.440 Police and fire department members; qualifications; examination; tenure; reinstatement

- (1) The legislative body in cities of the second and third classes and urban-county governments shall require all applicants for appointments as members of the police or fire departments to be examined as to their qualifications for office, including their knowledge of the English language and the law and rules governing the duties of the position applied for.
- (2) Each member of the police or fire department in cities of the second and third classes and urban-county governments shall be able to read, write and understand the English language, and have such other qualifications as may be prescribed. No person shall be appointed a member of the police or fire department unless he is a person of sobriety and integrity and is and has been an orderly, law-abiding citizen. In a city of the second class or urban-county government no person shall be appointed a member of either of such departments if he is over fifty (50) years of age.
- (3) Members of the police and fire departments in cities of the second and third classes or urban-county governments qualified under this section shall hold their positions during good behavior, except that the legislative body may decrease the number of policemen or firefighters as it may deem proper.
- (4) If the legislative body of a city of the second or third class or urban-county government decreases the number of policemen or firefighters, the youngest members in point of service shall be the first to be released and returned to the eligible list of the department, there to advance according to the rules of the department.
- (5) The legislative body in an urban-county government may by ordinance provide that any person who has successfully completed his probationary period and subsequently ceased working for the police or fire department for reasons other than dismissal may be restored to the position, rank and pay he formerly held or to an equivalent or lower position, rank or pay than that which he formerly held if he

so requests in writing to the appointing authority. Such person shall be eligible for reinstatement for a period of one (1) year following his separation from the police or fire department and shall be reinstated only with the approval of the appointing authority.

Related case law decisions:

In *Bogard v. Com.*, 687 S.W.2d 533 (Ky.App., 1984), the Kentucky Court of Appeals provided guidance on residency requirements in a case where an individual was cited for DUI by Steve Tolson, who had been hired by the City of Danville as a police officer. The Boyle County District Court dismissed the charges based on the fact that Tolson was not a qualified voter in Boyle County wherein the City of Danville was contained and, therefore, did not qualify as policeman under KRS 95.440 and, therefore, was not qualified to issue citations.

The Court discusses statutory enactments but concluded “that the 1980 enactment of the amendment to KRS 95.440(2) repealed by implication the provision of KRS 15.135 [KRS 15.335], and Tolson, because he was not a qualified voter in Boyle County, did not qualify as a police officer of the City of Danville at the time he issued the DUI citation against Bogard”. However, in another part of the opinion, the Court upheld the DUI prosecution.

In *Rottinghaus v. Board of Com'rs of City of Covington*, 603 S.W.2d 487 (Ky.App., 1979), the Kentucky Court of Appeals was asked the question of whether the City of Covington had validly enacted a police eligibility (appointment) program. The Court held that “Hiring a police officer must be viewed differently from hiring any other city employee. The power to use a gun, to arrest, and to question citizens cannot be taken lightly. No amount of pre-employment interviewing, testing, or post-employment history will satisfactorily show ability in the field. This must be observed. There must be a method by which an appointee can be dismissed without too much red tape to assure citizens that questionable candidates are removed without delay. The vehicle chosen by the City of Covington was Section 16-149. We think it is sound public policy to give broad powers to determine eligibility of appointees to serve as police officers. The Board of Commissioners did not exceed its powers when it enacted Section 16-149. It was properly enacted pursuant to KRS 95.430(2

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to qualification to hold office, summarized below:

OAG 86-9 “An individual must reside in the county wherein he is appointed deputy sheriff for at least two years, and residency refers to living in the county and participating in the life of the county”.

OAG 85-2 “The 1982 amendments to KRS 95.440 and KRS 95.710 repeal by implication the provision of KRS 15.335 relating to residency requirements of peace officers; therefore, police officers in second to fifth-class cities must be county residents”.

95.442 Authorization for civil service commission; rights of employee accepting management position

Any city of the second or third class may elect to operate under KRS 90.310 to 90.410, and, by ordinance, create a civil service commission. Any classified employee in the police or fire department who accepts an appointment and qualifies as chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of those respective positions. If an individual should cease to serve in any of those positions, there shall be restored to him or her the same classification and rank which he or she held prior to his appointment.

95.445 Auxiliary police

The legislative body of a city of the second, third, fourth, fifth, or sixth class or urban-county government, except a city of the fifth or sixth class in a county containing a first-class city, may by ordinance provide for the establishment or abolishment of an auxiliary police force to perform special duties within the city on terms it deems proper. The ordinance shall prescribe the number of officers and men of such force and the manner of their appointment, and rules and regulations governing the powers and duties of members of such force.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to qualification to general matter, and statutory power and authority issues summarized below:

OAG 82-183 “Various matters pertaining to members of a municipal auxiliary police force, including their general powers, jurisdiction, coverage under the state minimum wage law, exclusion from payment for "on call" time and power of arrest are discussed”.

OAG 78-675 “Auxiliary police have the same powers as regular police officers unless expressly limited by ordinance”.

95.450 Discipline of members

- (1) Except as provided in subsection (5) of this section no member of the police or fire department in cities of the second and third classes or urban-county government shall be reprimanded, dismissed, suspended or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination or violation of law or of the rules adopted by the legislative body, and only after charges are preferred and a hearing conducted as provided in this section.
- (2) Any person may prefer charges against a member of the police or fire department by filing them with the clerk of the legislative body who shall immediately communicate the same to the legislative body. The mayor shall, whenever probable cause appears, prefer charges against any member whom he believes guilty of conduct justifying his dismissal or punishment. The charges shall be written and shall set out clearly the charges made. The person preferring the charges may withdraw them at any time prior to the conclusion of the hearing. The charges may thereupon be dismissed.
- (3) Upon the hearing all charges shall be considered traversed and put in issue, and the trial shall be confined to matters related to the issues presented. Within three (3) days after the charges have been filed with the legislative body, that body shall proceed to hear the charges. At least two (2) days before the hearing the member accused shall be served with a copy of the charges and a statement of the day, place and hour at which the hearing of the charges will begin. The person accused may, in writing, waive the service of charges and demand trial within three (3) days after the charges are filed with the clerk.
- (4) The legislative body may summon and compel attendance of witnesses at hearings by subpoena issued by the clerk of that body and served upon the witnesses by any officer authorized to serve court subpoenas. If any witness fails to appear in response to a summons or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the commission may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the District Court. The member accused may have subpoenaed any witnesses he may desire, upon furnishing their names to the clerk. The action and decision of the body on the charges shall be reduced to writing and entered in a book kept for that purpose, and the written charges filed in the matter shall be attached to the book containing the decision.

- (5) When the appointing authority or the head of the department has probable cause to believe a member of the police or fire department has been guilty of conduct justifying dismissal or punishment, he or it may suspend the member from duty or from both pay and duty, pending trial, and the member shall not be placed on duty, or allowed pay, until the charges are heard. If the member is suspended, there shall be no continuances granted without the consent of the member accused.
- (6) The legislative body shall fix the punishment of a member of the police or fire department found guilty, by a reprimand, suspension for any length of time not to exceed six (6) months, by reducing the grade if the accused is an officer, or by combining any two (2) or more of those punishments, or by dismissal from the service.

Related case law decisions:

In *Palmer v. Driggers*, 60 S.W.3d 591 (Ky.App., 2001) the Kentucky Court of Appeals addressed some privacy issues in deciding the appeal of Jeffrey Palmer, a former police officer for the City of Owensboro, Kentucky, who appealed from a partial summary judgment entered by the Daviess Circuit Court, which pursuant to Kentucky's Open Records Act allowed Owensboro Messenger Inquirer, Inc., to obtain copies of certain police department records pertaining to a disciplinary action taken against him.

“On June 7, 2000, police officers Lisa Driggers, Mark Lee, and Palmer filed in the Daviess Circuit Court a petition for nondisclosure and exemption from the Open Records Act. In response, the newspaper asked the circuit court judge to review the records in camera. After reviewing the records and considering the parties' written and oral arguments, the trial court entered its partial summary judgment where it found that a formal disciplinary complaint had been filed against Palmer; that as a result of the complaint the Owensboro City Commission began a formal hearing that was closed at Palmer's request; on the second day of the hearing, Palmer indicated that he would submit his resignation, and the disciplinary proceeding immediately ended; on April 18, 2000, Palmer submitted his letter of resignation; neither Palmer's letter of resignation nor the written charges against him incorporated any of the investigative documents in the City's files; an exhibit which was attached to the written charges contained communications of a private nature involving third parties and was evidentiary in nature and not an essential part of the complaint; and all other information received by the court, except for the complaint and letter of resignation, related to matters which were not final at the time of the Open Records request.”

Palmer argued that the complaint contained information of personal, and private matters which, if disclosed, would constitute an invasion of his privacy. He claimed that there is no purpose in disclosing the information other than to quench the public's curiosity.

The Court concluded that “the complaint against Palmer presents a matter of unique public interest. At the time of the complaint, Palmer was an Owensboro police officer, who was sworn to protect the public. The complaint charged specific acts of misconduct by Palmer while he was on duty. Since the question of the disclosure of the details of this alleged misconduct is the reason for this appeal, we will generally describe the alleged misconduct as Palmer neglecting his duty to the public by having an inappropriate relationship with another police officer while on duty. We believe the public has a legitimate interest in knowing the underlying basis for a disciplinary charge against a police officer who has been charged with misconduct under KRS 95.450. While the allegations of misconduct by Palmer are of a personal nature, we hold that the public disclosure of the complaint would not constitute a clearly unwarranted invasion of Palmer's personal privacy.”

In Beckham v. City of Bowling Green, 743 S.W.2d 858 (Ky.App.,1987) the Kentucky Court of Appeals was asked by several Bowling Green police officers ask to find that KRS 95.450 prohibits the reduction of police officers' salaries absent disciplinary charges. The Court said “We believe, and so hold, that KRS 95.450 applies to disciplinary procedures and was intended to provide due process in such procedures, thus preventing arbitrary punishment of individual officers. Every case cited by the police officers in support of their contention concerns the discharge or punishment of individual officers. The present case simply does not involve the discipline of individual officers or even a group of officers. As such, we must uphold the city's right and duty to fix the compensation of its employees based on the resources available to it”.

In Hockensmith v. City of Frankfort, 723 S.W.2d 855 (Ky.App.,1986) the Kentucky Court of Appeals reviewed a case where officers were reassigned. “Under the city's ordinance concerning detectives, the position of detective in the CID is a duty assignment with temporary status only and those serving in this position retain their permanent rank established by civil service procedures. The ordinance also provided that those so serving do so under the direction of the chief of police and that they shall perform such other duties as may be assigned to them. Reassignment shall be only for reasons stated in writing by the chief to the Board of Commissioners”.

Two Detectives and a Sergeant “were reassigned by the appellee Police Chief Evans to another duty assignment in the Police Patrol Division pursuant to the chief's memorandum to appellants' and Sgt. Courtney's supervisors... with copies to each reassigned officer with another placed in each personnel file. That memorandum was accompanied by another of the same date from the chief to Paul H. Royster, the City Manager, for delivery to the city's Board of Commissioners giving his reasons for reassignment of the three officers from the detective duty assignment as required by the ordinance. The reasons given for the reassignment were that disharmony and animosity existed internally in the CID and much of the blame for it was placed on

Hockensmith and Lowery. The record does not reveal what form this problem took but that abnormal steps were needed to solve it, including appellants' reassignment. Its circulation seems to have been limited to the city manager and the four officers, including appellants and Sgt. Courtney, mentioned therein. That's all the record reveals. It was not placed in appellants' or the others' personnel files. Appellants' contention that it received widespread publicity is not borne out by the record".

The Court stated "we do not believe that the legislative intent, as expressed in the language it employs, is that KRS 95.450 applies to a "reprimand" by a superior officer to a subordinate officer. Each is an employee of the city, acting by and through its Board of Commissioners. We think that the term "reprimand" in KRS 95.450(1) means a reprimand by the employer. To hold otherwise would mean that the chief of police would be powerless to correct his subordinates without a hearing-a ridiculous requirement in an organization structured in the traditional military chain-of-command mode".

In Blair v. City of Winchester, 743 S.W.2d 28 (Ky.App.,1987) the Kentucky Court of Appeals heard a case involving cause for removal. Blair, a firefighter, "appealed from the judgment of the Clark Circuit Court which affirmed the decision of the Board of Commissioners of the appellee, City of Winchester, to terminate Blair's employment as a firefighter. The city's purported reason for firing Blair was that a work-related injury had left him physically unable to properly perform the work of a fireman. Blair indeed suffered a back injury while attempting to put out a fire in January, 1984. He had not yet been released by his physician to return to work when, on October 9, 1984, he attended a meeting of the City Board of Commissioners and publicly criticized the fire chief, appellee Robert N. Monroe and a city manager, Ed Burtner, for sending a half-million-dollar fire truck to a parade in Lexington. On October 10, 1984, Blair was ordered back to work by the chief and reinjured his back while stepping off a truck on October 18, 1984. He attempted to secure light duty work after this injury but was not allowed to work again. On December 7, 1984, Monroe filed charges against Blair with the clerk of the City of Winchester and a hearing before the Board of Commissioners commenced on December 11th. In its order the board found that Blair "was off duty almost the entire year of 1984," that his disability would continue "at least another year," and thus concluded that he was "guilty of inefficiency."

"Although the other grounds for adverse employment action in the statute clearly imply wrongdoing, we believe the term "inefficiency" to be distinct from misconduct. We find appropriate the definition of this term "inefficiency" as "the quality of being incapable of doing, or indisposed to do, the things required of an officer." It appears arbitrary and unjust to the appellant that his job required that he put his life in jeopardy to protect the citizens of Winchester and that having incurred an injury doing so, he is not allowed to continue working in another capacity. It is nevertheless reasonable that the city would desire firefighters who are physically able to function in that capacity. Thus we affirm

the trial court's ruling that the city had a legal cause to dismiss Blair from his position as firefighter”.

As noted previously in this section, the Kentucky Court of Appeals held in Rottinghaus v. Board of Com'rs of City of Covington, 603 S.W.2d 487 (Ky.App.,1979), that the “City board of commissioners did not exceed its powers in enacting ordinance, which provided that all appointments from police eligibility list were to be for initial probationary period of one year, which gave chief of police sole responsibility for evaluating performance and determining who qualified for permanent employment, and which expressly directed that appointees, until they successfully completed probationary period, were not entitled to statutory procedural protections afforded police and fire department members, but, rather, ordinance was properly enacted pursuant to statute giving city power to make rules governing operation of its police department”.

In Abney v. City of Winchester, 558 S.W.2d 622 (Ky.App.,1977). the Kentucky Court of Appeals was asked to rule on the issue of “whether a third class city, after a proper hearing, can discharge firefighters for misconduct who have failed to report for work after having made unsuccessful demands for collective bargaining during labor negotiations”.

The Court held that the city commission, after providing proper notice and conducting a hearing, was within its legal rights to dismiss the employees for their absence from duty.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to these statutes and their relationship to the Police Officers Bill of Rights (KRS 15.520) summarized below:

OAG 84-2 “Police officer may be suspended for misconduct, without pay, up to a maximum of sixty days prior to a hearing under KRS 15.520, which supersedes the three-day period under KRS 95.450(5)”.

OAG 81-134 “Notice to a police officer of charges and the time of a hearing is governed by KRS 15.520 instead of KRS 95.450. KRS 446.030 governs the computations of time with respect to notice and hearing”.

95.460 Appeals to Circuit Court and Court of Appeals

- (1) Any member of the police or fire department in cities of the second and third classes or urban-county governments found guilty by the legislative body of any charge, as provided by KRS 95.450, may appeal to the Circuit Court of the county in which the city or urban-county government is located, but the enforcement of the judgment of the body shall not be suspended pending appeal. The notice of the appeal shall be filed not later than thirty (30) days after the date the legislative body makes its determination on the charge.
- (2) Upon request of the accused, the clerk of the legislative body shall file a certified copy of the charges and the judgment of that body in the Circuit Court. Upon the transcript being filed, the case shall be docketed in the Circuit Court and tried as an original action.
- (3) If the clerk fails to certify the transcript to the Circuit Court within seven (7) days after the request is made, the party aggrieved may file an affidavit in the Circuit Court setting out as fully as possible the charges made, the time of the hearing, and the judgment of the legislative body, together with a statement that demand for transcript was made upon the clerk more than five (5) days before the filing of the affidavit. Upon the filing of the affidavit in the Circuit Court, the case shall be docketed, and the Circuit Court may compel the filing of the transcript by the clerk by entering the proper mandatory order, and by fine and imprisonment for contempt. The appeal shall have precedence over other business, and be determined speedily.
- (4) An appeal will lie from the judgment of the Circuit Court to the Court of Appeals as in other cases.

Related case law decisions:

In *Terry v. Williamson*, 931 S.W.2d 469 (Ky.App.,1996), the Kentucky Court of Appeals heard a case involving the right to an appeal brought by Terry, who was employed as patrolman with the Corbin Police Department. "On March 3, 1994, three officers filed formal charges against Terry. The charges alleged misconduct, conduct unbecoming a Corbin Police Officer, inefficiency, insubordination, and violation of the Corbin Police Department Rules and Regulations. A hearing on the matter was conducted by the Corbin City Commission on March 31, 1994; this hearing resulted in Terry's dismissal from the Corbin Police Department. On April 21, 1994, Terry filed a complaint against the appellees (the City) in Whitley Circuit Court. On April 23, 1994, he filed a request that the City Clerk file a certified copy of the charges and judgment against him and that the Clerk certify the transcript of the proceedings with the circuit court".

“In response, the City filed an Objection to Notice on May 19, 1994, arguing that Terry had not filed a notice of appeal as required by KRS 95.460. On the same day, the City also filed a motion to dismiss, citing the circuit court's lack of jurisdiction due to Terry's failure to file a notice of appeal pursuant to KRS 95.460. Terry filed several motions to compel compliance with his request that the City Clerk file a certified copy of the charges and judgment against him as well as a certified transcript of the hearing; the City also filed various motions, arguing that Terry had not complied with the procedure set forth in KRS 95.460 for filing an appeal”.

In ruling in favor of Terry, the Court concluded “It is amply clear from the complaint that Terry is appealing the decision of Corbin City Commission rendered on March 31, 1994. The complaint stated the formal charges that had been filed against Terry, the fact that a hearing was conducted and that he was dismissed, and the various grounds upon which he was challenging the City's decision. Terry further complied with the statute by specifically requesting that the City Clerk meet the statutory requirements of KRS 95.460(2). The City was on notice and was fully aware that Terry was appealing its decision to the circuit court”.

95.470 Prohibition of political activity

- (1) No person shall be appointed a member of the police or fire department in cities of the second and third classes or urban-county governments on account of any political service, contribution, sentiment or affiliation. No member shall be dismissed, suspended or reduced in grade or pay for any political opinion.
- (2) The appointment and continuance in office of members of the police or fire department shall depend solely upon their ability and willingness to enforce the law and comply with the rules of the department, and shall not be a reward for political activity or contribution to campaign funds.
- (3) No member of either department shall be forced to pay or collect any assessments made by political organizations, contribute to political campaign funds, or be active in politics.
- (4) No member of either department shall be active in politics or work for the election of candidates while on duty.

Related case law decisions:

In *Jones v. Hillview Civil Service Com'n.*, 760 S.W.2d 91 (Ky.App.,1988), the Kentucky Court of Appeals heard an appeal from the Bullitt Circuit Court which upheld the

discharge of a police officer for allegedly participating in partisan political campaigning and unsatisfactory job performance”.

The most recent date Jones, a police officer, “was accused of participating in partisan political campaigning was during the May 1985 primary. The most recent date he was accused of unsatisfactory job performance was October 16, 1984. The Commission did not exist until October 16, 1985. The Council, not the Commission, suspended Jones on November 7, 1985, and it was not until December 1, 1985, that Jones and all other police officers became classified as civil service employees. Charges against Jones were not brought before the Commission until December 11, 1985. All of those charges predated not only Jones's classification as a civil service employee, but the very existence of the Commission itself. We therefore conclude that the Commission's dismissal of Jones was illegitimate, and the proper forum for any such action was the Council under KRS Chapter 95”.

“Jones argues that the clear weight of the evidence produced at the hearing does not support the charge against him. We agree. The only evidence that Jones participated in a partisan political campaign was that he accompanied another man to a voter's residence, and his companion, not Jones, tried to influence her vote. Also, Jones had placed a Powell campaign poster in his own yard. This is not proscribed activity by any standard, and we shudder to think of the chilling effect it would have upon the democratic processes in a free society if it were”.

“Jones was fired, purely and simply, as a result of political factionalism. We are appalled that a Civil Service Commission, whose purpose is to assure the fairness and integrity of a city's personnel decisions, would be put to such procrustean usage by the preponderant powers”.

95.480 Duties and liabilities of chief of police and policemen; fees; cities of second class or urban-county government

- (1) The chief of police in cities of the second class or a policeman acting under his authority shall attend all sessions of the legislative body, execute their orders, and preserve order at their sessions.
- (2) The chief of police may receive the same fees, for the use of the city or urban-county government, that sheriffs are entitled to receive for like services, and have the same power to collect them.
- (3) The chief of police, policemen deputized by him, and others to whom the process of a court is directed and comes for execution shall execute and return the process within the time prescribed by law for sheriffs to execute and return similar process, and on their failure they and their sureties shall be liable to the same penalties as

sheriffs. They shall be subject to similar penalties for not paying over moneys collected on execution, making illegal charges, false returns and like illegal acts.

- (4) The District Court may hear and determine motions against them and their sureties for failure to pay over moneys collected, as the Circuit Court has jurisdiction to hear and determine motions against defaulting sheriffs, or may proceed by fines and imprisonment to enforce the execution and return of process.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued an opinion related to the jurisdiction to serve process summarized below:

OAG 81-300 “A sheriff can serve criminal process anywhere in his county. Second-class city police can serve criminal process anywhere within their city. The courts should determine which peace officer is required to serve criminal process out of their courts”.

95.490 Oath and bond of members of police force; cities of second class or urban-county governments

- (1) Each member of the police force in cities of the second class or urban-county government, before entering upon the discharge of his duties, shall take an oath before the mayor to faithfully discharge the duties of his office. The oath shall be subscribed by the person taking it, and filed in the office of the city auditor, or in urban-county governments, the office most closely resembling such office.
- (2) The chief of police and each other member of the police force shall give such bond to the city or urban-county government, and with such surety as may be required by ordinance, conditioned that they will faithfully perform the duties of their office and pay over to the persons entitled thereto all moneys that may come into their hands. A lien shall exist on the lands of the chief of police or policemen deputized by him, and their sureties, from the time of executing bond, for all sums of money that come into their hands.

95.495 Hours of work and annual leave for members of police department in cities of second class or urban-county governments

- (1) In all cities of the second class or urban-county governments, except those in which, by ordinance, the patrolmen are employed or paid by the day, the members of the police department shall not be required to work more than eight (8) hours per day, for five (5) days each week or ten (10) hours per day, for four (4) days each week, except in the event of an emergency. Each member of the police department shall have an annual leave of fifteen (15) working days with full pay.
- (2) The salary of the members of the police department shall not be reduced by reason of the enactment of this section.

95.497 Hours of work and annual leave for members of police department; cities of third class

- (1) In all cities of the third class, except those in which, by ordinance, the patrolmen are employed or paid by the day, the members of the police department shall not be required to work more than eight (8) hours per day, for five (5) days each week, except in the event of an emergency. Each member of the police department shall have an annual leave of fifteen (15) working days with full pay.
- (2) The salary of the members of the police department shall not be reduced by reason of the enactment of this section.

Cities of the Fourth and Fifth Classes:

95.710 Qualifications of members of police and fire departments

To be eligible for appointment as a member of the police force or fire department of a city of the fourth or fifth class, except cities of the fourth class which have adopted KRS 95.761 to 95.784, a person must be able to read and write the English language intelligibly, and sober, moral and sagacious. In addition, a member of a police department in a city of the fourth or fifth class shall be at least twenty-one (21) years of age, and a member of a fire department of a city of the fourth or fifth class shall be at least eighteen (18) years of age. No person who has been convicted of a felony is eligible for appointment. After appointment no member shall interfere in any election.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to residency requirements to hold office issues summarized below:

OAG 85-2 “The 1982 amendments to KRS 95.440 and KRS 95.710 repeal by implication the provision of KRS 15.335 relating to residency requirements of peace officers; therefore, police officers in second to fifth class cities must be county residents”.

OAG 77-374 “Police chief of a fourth-class city need not be a resident of the city he works in or the county containing that city, but he must be a resident of the Commonwealth; if the chief is not in fact a legal resident of Kentucky and refuses to resign from his position, the city legislative body may remove him pursuant to KRS 95.720(3). The attorney general's office generally refrains from authorizing ouster proceedings where the general assembly has provided the city council with power to remove a disqualified officer”.

95.760 Oath of policemen

In cities of the fourth and fifth classes except cities of the fourth class which have adopted KRS 95.761 to 95.784, every member of the police force shall take an oath to faithfully perform the duties of his office, and that he possesses the required qualifications. In cities of the fourth class the oath shall also provide that he will not interfere in any election.

95.761 Adoption of civil service, employees retirement system, and police and firefighters' pension plan; exemptions from classified service; limitations on creation of new fund after August 1, 1988

- (1) Any city of the fourth or fifth class which has now, or in which there may be hereafter established a regular police or fire department in the future, may by ordinance create a civil service commission, whose duties shall be to hold examinations as to the qualifications of applicants for employment within the police or fire departments.

* * * * *

- (3) A city of the fourth or fifth class is authorized to adopt the provisions of KRS 90.300 to 90.420 governing civil service, the same as a city of the third class, and may provide a retirement system for any of its employees, including police and firefighters, pursuant to KRS 90.400 or 90.410. If a city creates a retirement

system for its police and firefighters pursuant to KRS 90.400 or 90.410, it shall establish a board of trustees for that system. The provisions of KRS 90.400 and 90.410 notwithstanding, a majority of the board shall be members of the retirement system elected by the members of the retirement system. The board of trustees shall control and manage the retirement fund, for the exclusive purposes of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the plan. The board may contract with investment advisors or managers to perform investment services as deemed necessary and prudent by the board.

- (4) A city of the fourth or fifth class may adopt the provisions of KRS 79.080 or 78.510 to 78.852 for any of its employees, or KRS 95.767 to 95.784 for its police and firefighters.

* * * * *

- (6) (a) Any of the following offices, positions, and places of employment, in the police and fire departments, may be excluded from the classified service: The chief of police, assistant chief of police, chief of firefighters and assistant chief of firefighters.

- (b) Any classified employee in either department who shall accept an appointment and qualify as chief of police, assistant chief of police, chief of firefighters, or assistant chief of firefighters, shall be deemed to have received a leave of absence from the classified service for, and during the incumbency of, any of said respective positions. Should any such chief or assistant chief, cease to serve as such, the same classification and rank which he had prior to said appointment shall be restored to him.

* * * * *

95.762 Examination and qualifications of applicants for police and fire departments; political discrimination forbidden; guarantee of tenure; decrease of personnel

- (1) The commission shall require all applicants for appointments as members of the police or fire departments to be examined as to their qualifications to fill the office of policeman or firefighter, and as to their knowledge of the English language, and as to the law and rules governing the duties of policemen and firefighters. Every member of the police or fire department shall be able to read and write and understand the English language, and have such other general qualifications as may be prescribed.

- (2) No person shall be appointed a member of the police or fire departments unless he

is well known to be a person of sobriety and integrity, and has been and is an orderly, law-abiding citizen, nor shall any person be appointed as a member of said police or fire departments on account of any political, partisan service rendered by him or on account of political sentiments or affiliations, or who is under twenty-one (21) years of age or over forty (40), unless the applicant has had as much as five (5) years' experience as a regular policeman or firefighter and is not over fifty-five (55) years of age. No member of the police or fire departments shall be removed or discharged or reduced in grade or pay for any political partisan opinion. The appointment and continuance upon the police and fire departments shall depend solely upon the ability and willingness of a person to comply with the rules of the said departments and to perform the duties of said departments. No appointment to or continuance as a member of a police or fire department shall be as a reward for political activity nor be obtained by political services or contributions to campaign funds.

* * * * *

- (4) Members of police and fire departments otherwise qualified under this law shall hold their positions during good behavior, provided, however, that the provisions of KRS 95.761 to 95.785 shall not prevent the said city legislative body from increasing or decreasing the number of policemen or firefighters, as may be deemed proper from time to time, and provided further, that in the event the said city legislative body decreases the number of policemen or firefighters, the youngest member in point of service shall be the first to be reduced and returned to the eligible list and to advance according to the rules and regulations of said department.
- (5) The civil service commission may provide that appointments for initial permanent employment may be probationary appointments for a period of not more than twelve (12) months, after which probationary period regular appointments shall be given to all probationary employees who are deemed to be satisfactory by the respective appointing authority.

Related case law decisions:

In *Turner v. Cole*, 559 S.W.2d 170 (Ky.App.,1977), the Kentucky Court of Appeals was presented with four questions. "The first is whether a city of the fourth class can adopt the provisions of KRS 90.300 to KRS 90.420 and apply them to police and fire departments. Those particular sections include KRS 90.300(2) which provides:

"The provisions of KRS 90.310 to KRS 90.410 are independent of and do not affect the laws governing the police and fire departments, nor their pension funds, in cities of the second and third classes".

This appeal was initiated by Jewell Turner, who was the Chief of Police in Providence, Kentucky, a city of the fourth class, having been appointed to fill out the unexpired term

of his resigned predecessor. “On October 27, 1975, the “lame duck” city council enacted an ordinance adopting the provisions of “Sections 90.310 to 90.410 of the Kentucky Revised Statutes” and applying them to “all employees in the Police and Fire Departments of the City of Providence except as specifically included (sic) from time to time.” A civil service commission was created, its members sworn in, but no pension fund was created nor was any tax levied or provided for”.

“On January 5, 1976, a new council was in office and voted to repeal the ordinance of October 27, 1975, and did not rehire the appellant but hired a new Police Chief, one Raymond Ray. This action was filed by appellant seeking restoration to his position as Chief of Police, which was denied by the Webster Circuit Court”.

In reviewing the statutory construction and relationship between the statutes, the Court said “it is the opinion of this Court that the exclusionary provisions of KRS 90.300(2) are not applicable to cities of the fourth and fifth class and that the ordinance adopted October 27, 1975, was valid and applied to all employees of the police and fire departments of the City of Providence”.

Chief Turner argued that his position was covered under the valid ordinance. “It is the opinion of this Court that the wording of this ordinance relating solely to employees effectively excluded the chief of police therefrom. The Kentucky courts have long recognized a difference between an employee and an officer... There is no question in our mind that the chief of police is an officer within the standards imposed by the courts and not an employee and was therefore not covered by the civil service ordinance of October 27, 1975, but specifically excluded therefrom. The city council could have included the chief of police by using the phrase “employees or officers” but did not do so”.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued an opinion related to Civil service re-examinations summarized below:

OAG 82-580 “Absent any statute authorizing reinstatement without re-examination a member of a police department who is injured and transferred to the non-civil service position of dispatcher cannot regain civil service status without submitting to re-examination.

95.764 Conduct of examinations; notice; certification of eligible list; appointment from list; rules and regulations; compensation of commissioners

The civil service commission shall conduct an examination of persons for appointment as members of the police and fire departments each time a vacancy shall occur in said departments. The mayor shall notify the commissioners each time a vacancy occurs in either of said departments and the commissioners shall within the two (2) weeks following the receipt of such notice hold an examination for persons seeking appointment to such vacancy after giving notice by publication pursuant to KRS Chapter 424. Within one (1) week following the holding of said examination, said commissioners shall certify to the legislative body the names of the three (3) persons receiving the highest grades. The legislative body may appoint any one (1) of said three (3) persons to said department. In the event a vacancy thereafter occurs in said department, or additions thereto of regular or substitute policemen or firefighters are made, within one (1) year following the certification of said names, the legislative body shall fill said vacancy or make such additions from the list of names certified. The commissioners shall make all rules and regulations for the proper conduct of their office. The civil service commissioners shall receive a salary each of one dollar (\$1) per annum, paid out of the city's general fund, and for their services and the expense of holding any one (1) examination by the commissioners after due notice by the mayor has been given to the chairman of the said commission that a vacancy occurs in either of said departments and after the eligible list has been exhausted, shall be paid by the legislative body out of the city's general fund, not to exceed ten dollars (\$10).

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued some opinions related to appointments and reinstatement, issues summarized below:

OAG 83-54 "The mayor and not the council has the authority to make civil service appointments from the list submitted by the civil service commission pursuant to KRS 95.764".

OAG 82-580 "Absent any statute authorizing reinstatement without re-examination a member of a police department who is injured and transferred to the non-civil service position of dispatcher cannot regain civil service status without submitting to re-examination".

95.765 Removal or reduction in grade; grounds; procedure; suspension; punishment

(1) No member of the police or fire departments shall be removed from the department

or reduced in grade upon any reason except inefficiency, misconduct, insubordination or violation of law, or violation of the rules adopted for the departments. Any person may prefer charges against a member of the police or fire departments, which must be filed in the office of the mayor, who shall thereupon communicate said charges without delay to the legislative body. Said charges must be written, signed by the person making such charges and must set out with clearness and distinctness each and every charge. It shall be the duty of the mayor and each member of the legislative body, whenever probable cause appears, to prefer charges against any member of the police or fire departments whom he or she believes to have been guilty of any conduct justifying his removal or punishment in the interest of public order. The charges thus filed shall be written and shall set out with distinctness and clearness the charges made, and upon the hearing of any charges, as hereinafter provided, all said charges shall be considered traversed, and put in issue, and the trial shall be confined to matters related to the issue so presented. All charges against members of the police or fire departments shall be filed with the clerk of the legislative body, and within three (3) days after said filing the legislative body shall proceed to hear and examine said charges; provided two (2) days before said hearing the member of the police or fire departments, accused, has been served with a copy of said charges, and a statement of the day, place and hour at which and when the hearing of said charges shall begin. The person accused may, however, in writing, waive the service of said charges, and demand trial within three (3) days after said charges are filed with the clerk of said legislative body. The legislative body will have the power to summon and compel the attendance of witnesses at all hearings or sittings by said body, upon subpoena issued by the clerk of said body, and served upon said witnesses by any officer authorized to serve subpoenas from any court of justice in the county. If any witness fails to appear in response to a summons or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the commission may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the District Court. The member of the police or fire department, the accused, shall have the right to have subpoenaed, in his behalf, any witness he may desire, upon furnishing their names to the clerk of said body, and the action and decision of said body on said charges shall be reduced to writing and shall be entered in a book to be kept for that purpose by the clerk of said legislative body, and the written charges filed in this matter shall be preserved and securely attached to the book containing the legislative body's decisions.

- (2) In cases where the mayor or chief has probable cause to believe that a member of the police or fire department has been guilty of any conduct justifying removal or punishment, he may suspend said member from duty, or from both pay and duty, pending said trial, and said member shall not be placed on duty or allowed pay thereafter until the charges are heard by the legislative body. The said body shall fix punishment against a member of the police or fire departments found guilty of any charge under KRS 95.761 to 95.785, by reprimand or suspension for any length of time in their judgment, not to exceed six (6) months, or by reducing the grade, if the

accused be chief or other officer, or by combining any two (2) or more of said punishments, or by removal or dismissal from the service of any such member of the police or fire department. No member of the police or fire department except as provided in KRS 95.761 to 95.785 shall be reprimanded, removed, suspended, or dismissed from the department until written charges have been made, or preferred against him, and a trial had as herein provided.

Related case law decisions:

In *Shelton v. Brown*, 71 F.Supp.2d 708 (W.D.Ky.,1998), the United States District Court for the Western District of Kentucky reviewed the case of Shelton, who was the Chief of Police of the City of Albany until he was fired by the Mayor. Shelton claims that his termination deprived him of his constitutional liberty and property interests in violation of substantive and procedural due process requirements of the Fourteenth Amendment to the United States Constitution and brought a 42. U.S.C. §1983 action against the Defendants, City of Albany, and its Mayor, James A. Brown,

“Shelton complains that he was terminated without being given a pre-disciplinary hearing as required in Part III Section D(3)(d) of the City's Policies and Procedures Manual. Shelton also argues that he was entitled to due process rights, as a police officer, under KRS 15.520 and KRS 95.765. The Defendants argue that Shelton was an employee terminable at-will under Kentucky law; that KRS 15.520 and KRS 95.765 does not apply to this case; and, that Shelton was given an opportunity for a pre-disciplinary hearing, but that he failed to attend those meetings.

Shelton “argues that Defendants failed to comply with KRS 95.765 when the Mayor terminated his employment. KRS 95.765 provides that police officers can only be discharged for cause: “No member of the police or fire departments shall be removed from the department or reduced in grade upon any reason except inefficiency, misconduct, insubordination or violation of law, or violation of the rules adopted for the departments.” KRS 95.765(1). In order for KRS 95.765 to apply, the City must have adopted the civil service provisions”.

Shelton further “argues that *McCloud* (discussed previously) is not controlling since Shelton was charged with misconduct once before and KRS 15.520 does not require that disciplinary proceedings emanate from a citizen's complaint”. However, the Court found “that there is nothing to suggest that Shelton's removal was predicated on any complaint of professional misconduct, KRS 15.520(1)(a), or upon any charge involving violation of any government rule or regulation, KRS 15.520(1)(e). Instead, the evidence indicates that his removal was the result of the action of the Mayor exercising the discretionary authority purportedly given him under KRS 83A.080(2). As a result, KRS 15.520 provides Plaintiff no property interest in his continued employment as Chief of Police”.

Shelton made an additional argument “that even absent a statute or ordinance protecting the terms of his employment, his position was protected by contract rendering his employment not terminable at the will of the Mayor”. Reviewing case law, the Court stated “[O]rdinarily an employer may discharge his at-will employee for good cause, for no cause, or for a cause that some might view as morally indefensible...However, the parties to an employment contract can make the employment relationship terminable only for cause ‘by clearly stating their intentions to do so....’” According to Plaintiff (Shelton), the City's Policies and Procedures Manual, Part III, Section D(3), requires a pre-disciplinary hearing to be offered an employee who is facing dismissal”.

The Defendants argued “that Shelton was afforded the pre-disciplinary hearing provided by the Policies and Procedure Manual”. However, the Court “rejects the notion that Shelton was given the opportunity for such a hearing but that he failed to take advantage of it. The evidence merely shows that Shelton missed two meetings, neither of which were identified as disciplinary meetings. He was not advised that he might be discharged as a result of those meetings, nor was he advised to seek legal representation or gather witnesses on his own behalf. It is clear that the City failed to give Shelton the process afforded him under the Policies and Procedures Manual”.

The final ruling was that Shelton was “an at-will employee”... therefore, he has no constitutionally protected property interest in his employment”.

In City of Madisonville v. Sisk, 783 S.W.2d 885, (Ky.App.,1990), the Kentucky Court of Appeals examined a case based upon the trial court's finding that the authority to terminate appellee's (Sisk) employment rested in the Madisonville City Council rather than in the city's mayor.

“Since Madisonville, a fourth-class city, participates in the law enforcement foundation program fund pursuant to KRS 15.410 *et seq.*, it is required to adhere to certain standards and procedures for the investigation of complaints filed against police officers as set out in KRS 15.520. See KRS 15.520(4). In November 1987 appellee, a Madisonville city police officer, was charged with neglect of duty, insubordination, disobedience, and unauthorized absence from duty stemming from an incident which occurred several days earlier. Although appellee requested a hearing before the city council, that request was denied and the hearing was conducted before the Madisonville mayor”.

In a city such as Madisonville, the mayor constitutes the city's executive authority and the city council constitutes its legislative body. KRS 83A.130(2) and (11). Further, KRS 83A.130(9) states in pertinent part that:

The mayor shall be the appointing authority with power to appoint and remove all city employees, including police officers, except as tenure and terms of employment are protected by statute, ordinance or contract and except for employees of the council. (Emphasis added.)”

“KRS 15.520, however, specifically sets out the standards and administrative due process rights which apply to any hearing conducted by a statutorily appointed authority or body regarding any complaint of police misconduct in a city such as Madisonville. Further, KRS 95.765 addresses the identity of such statutorily appointed authorities...”

“In cases where the *mayor* or chief has probable cause to believe that a member of the police or fire department has been guilty of any conduct justifying removal or punishment, he *may suspend said member from duty, or from both pay and duty*, pending said trial, and said member shall not be placed on duty or allowed pay thereafter *until the charges are heard by the legislative body. The said body shall fix punishment No member* of the police or fire department except as provided in KRS 95.761 to 95.785 *shall be reprimanded, removed, suspended, or dismissed from the department until* written charges have been made, or preferred against him, and a *trial had as herein provided.* (Emphasis added.)”

“KRS 83A.080(2) and 83A.130(9) permit a local executive authority such as a mayor to terminate the employment of a nonelected city official such as a police officer only if there is no statute which provides otherwise. It is clear to us that KRS 95.765 is such a statute, and that it requires that a disciplinary hearing be conducted before the legislative body rather than before the mayor. It follows, therefore, that the trial court did not err by concluding that appellee (Sisk) was entitled to a hearing before the Madisonville City Council prior to any discharge”.

In McGlone v. Fannin, 98 F.Supp.2d 801 (E.D.Ky. 2000), the United States District Court for the Eastern District of Kentucky heard a discharge case involving McGlone, who was hired as a police officer for the city of Prestonsburg in October, 1998. All parties agree, that while (McGlone) worked forty hours a week during November and December of 1998, Plaintiff was still officially listed as a “part time” employee. McGlone did not receive any vacation time, sick leave, or retirement benefits.

“On January 8, 1999, Plaintiff (McGlone) arrested a woman on charges which included reckless driving. The woman, a friend of the Mayor of Prestonsburg, complained about this arrest. The Mayor met with the City Council's personnel committee to discuss the matter. While no formal action was taken, Plaintiff was moved from night shifts to day shifts. While working day shifts, which primarily required Plaintiff to write tickets, Plaintiff began to make disparaging remarks about the Mayor. Plaintiff's supervisor at the police station told Plaintiff to refrain from such remarks”.

“On February 8, 1999, Police Chief Conley wrote a letter to Mayor Fannin, recommending Plaintiff's termination. The letter indicated that Conley had observed Plaintiff at his home, two miles outside the city limits, at a time when Plaintiff was supposed to be on duty within the city limits. Plaintiff was also cited as violating “call in” procedures, and for failure to attend Fire Range Qualification training. On March 10, 2000, the City Council personnel committee met to discuss Conley's letter. A motion was passed to terminate Plaintiff. Plaintiff was terminated on March 15, 2000”.

The Court looked at the reasons for McGlone's termination. "If Plaintiff was discharged for the negative comments he made regarding the Mayor, the Plaintiff claims said discharge was illegal and in violation of his First Amendment rights. If Plaintiff was discharged due to a citizen complaint, Plaintiff argues he was entitled to a hearing under KRS 15.520. If Plaintiff was discharged due to inefficiency or misconduct, Plaintiff contends that he was entitled to rights promulgated under KRS 95.765".

"Plaintiff argues that KRS 15.520 protects him from discharge based on a citizen's complaint. Once the City Counsel had grounds to discharge him, Plaintiff argues that he was entitled to a hearing. Unfortunately, KRS 15.520(4) states that the hearing rights outlined in the statute "apply only to police officers of local units of government who receive funds pursuant to KRS 15.410 through 15.992." KRS 15.520(4). The statute clearly indicates that the rights vest only in "officers... who receive funds". Plaintiff was not receiving funds under this program. In fact, Plaintiff was ineligible to receive funds under this program as he had not yet completed the 400 hours of training required to receive funding under the "Law Enforcement Foundation Program Fund." KRS 15.440(4). Regardless of Plaintiff's full time or part time status, he is not eligible for the mandatory hearing procedures created under KRS 15.520".

"Plaintiff is not eligible for the hearing requirements promulgated under KRS 95.765. In order for a city to be required to comply with the due process requirements outlined in KRS 95.765, the city must have adopted a civil service system. The affidavit of the Mayor of Prestonsburg clearly indicates that no such system is in place in Prestonsburg, therefore, the rights outlined in KRS 95.765 are not available to the Plaintiff".

"Plaintiff does not have a Fourteenth Amendment claim under Prestonsburg's Personnel Policies and Procedures Manual. This document clearly states that "unless otherwise provided in writing, employment should be at will; therefore, either party may terminate the relationship at any time and for any lawful reason...As Plaintiff has not shown a writing implying otherwise, he was an employee at will and could be fired for cause, or without cause".

In *Irwin v. City of Hardinsburg*, 2004 WL 67859, (Ky.App.,2004), a Not Reported case decided by the Kentucky Court of Appeals which reviewed the issue of discharge for cause and hearing requirements. "Irwin served the city of Hardinsburg for several years. He was initially employed full-time, but after October 1994 he worked only one or two days per week. In August 1999, "due to the financial constraints" of the police department's budget, the mayor, on behalf of the city, laid Irwin off. For the purposes of this action, the city concedes that the lay-off was in effect a discharge".

“KRS 83A.080(2), provides that:

[a]ll nonelected city officers shall be appointed by the executive authority of the city and, except in cities of the first class, all these appointments shall be with approval of the city legislative body if separate from the executive authority. The officers may be removed by the executive authority at will unless otherwise provided by statute or ordinance.

Absent a statute providing otherwise, therefore, Irwin's discharge at the mayor's discretion was lawful”.

“Irwin contends that KRS 95.765 is a statute providing otherwise. This statute, however, is part of the civil service commission provisions-KRS 95.761-95.784-that do not come into effect until by ordinance a fourth or fifth-class city adopts them. Hardinsburg has not adopted a civil service plan”.

In summary the Court held: “because Hardinsburg has not adopted a civil-service plan, the trial court correctly ruled that KRS 95.765 did not qualify the mayor's authority under KRS 83A.080 to discharge Irwin at will and without a hearing”.

See also Jones v. Hillview Civil Service Com'n., 760 S.W.2d 91 (Ky.App.,1988), discussed previously at KRS 95.470.

95.785 Effect of adoption of KRS 95.761 to 95.784 on other statutes

When the provisions of KRS 95.761 to 95.784 have been accepted and adopted by the legislative body of any city of the fourth class, KRS 95.710 and 95.760 shall not apply to that city.

TAB 12

KRS CHAPTER 164

CHAPTER 164 STATE UNIVERSITIES AND COLLEGES; REGIONAL EDUCATION; ARCHAEOLOGY

164.950 Safety and security departments and officers authorized

The governing board of each public institution of higher education is authorized to establish a safety and security department and appoint safety and security officers and other employees for the university, college, or other institution of public higher education for which it is responsible, to prescribe distinctive uniforms for the safety and security officers of said institution, and to designate and operate emergency vehicles. Safety and security officers so appointed shall take an appropriate oath of office, in the form and manner consistent with the Constitution of Kentucky, and shall serve at the pleasure of the governing board.

Related Opinions of the Attorney General:

The Office of the Kentucky Attorney General has issued an opinion related to the compatibility of positions, summarized below:

OAG 77-521 "A university safety and security officer appointed and holding his position pursuant to KRS 164.950 to KRS 164.980 is a state officer and as such is precluded by Ky Const § 165 and KRS 61.080(1) from serving, at the same time, as either a city officer (city policeman) or a county officer (deputy sheriff)".

164.955 Safety and security officers; powers and duties

(1) Safety and security officers so appointed shall be peace officers and conservators of the peace. They shall have general police powers including the power to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the employing governing board of the respective institution employing them. Without limiting the generality of the foregoing, such safety and security officers are hereby specifically authorized and empowered, and it shall be their duty:

(a) To preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the campuses of their respective institutions, and to protect all persons and property located thereon from injury, harm and damage; and

- (b) To enforce, and to assist the officials of their respective institutions in the enforcement of, the lawful rules and regulations of said institution, and to assist and cooperate with other law enforcement agencies and officers. Provided, however, that such safety and security officers shall exercise the powers herein granted upon any real property owned or occupied by their respective institutions, including the streets passing through and adjacent thereto. Said powers may be exercised in any county of the Commonwealth where the institution owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which such property is located, dependent upon the jurisdiction involved.
- (2) Safety and security officers may exercise their powers away from the locations described in subsection (1) of this section only upon the following conditions:
- (a) When in hot pursuit of an actual or suspected violator of the law; or
 - (b) When authorized to do so pursuant to the agreement authorized by subsection (1) of this section; or
 - (c) When requested to act by the chief of police of the city or county in which the institution's property is located; or
 - (d) When requested to act by the sheriff of the county in which the institution's property is located; or
 - (e) When requested to act by the commissioner of the Department of Kentucky State Police; or
 - (f) When requested to act by the authorized delegates of those persons or agencies listed in paragraph (c), (d) or (e) above; or
 - (g) When requested to assist a state, county or municipal police officer, sheriff, or other peace officer in the performance of his lawful duties; or
 - (h) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.
- (3) Safety and security officers appointed pursuant to KRS 164.950 to 164.980 shall have, in addition to the other powers enumerated herein, the power to conduct investigations anywhere in this Commonwealth, provided such investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the university. Where desirable and at the discretion of the institution of higher education's police officials, the university safety and security department may coordinate said investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.
- (4) Safety and security departments created and operated by the governing boards of public institutions of higher education shall, for all purposes, be deemed public police departments and the sworn safety and security officers thereof are, for all purposes, deemed public police officers.

- (5) Nothing in KRS 164.950 to 164.980 shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Department of Kentucky State Police, sheriff, constable, or other peace officer either on the property of an institution of higher education or otherwise.

164.960 Safety and security officers; qualifications

All persons appointed as safety and security officers pursuant to KRS 164.950 to 164.980 shall, at the time of their employment, be:

- (1) Not less than eighteen (18) years of age; and
- (2) Comply with the requirements of KRS 61.300, other than the age requirement; and
- (3) Shall possess whatever other requirements as may be set by the governing board of the institution of public higher education which employs them.

164.965 Safety and security officers; promotion and compensation

The governing board of each institution of public higher education may provide for the appointment or promotion to the ranks and grades and positions of the department such officers and civilians as are considered by the board to be necessary for the efficient administration of the department. Such officers and civilians shall receive such compensation as shall be fixed and paid by the board.

TAB 13

KRS CHAPTER 183

CHAPTER 183 AVIATION

Airport Safety and Security

183.880 Establishment of safety and security department by airport board; oath by appointees

The airport board created by a county containing a city of the second class, an urban-county government, or created jointly by a city of the first class and county is authorized to establish a safety and security department and appoint safety and security officers and other employees for the public airport for which it is responsible, to prescribe distinctive uniforms for the safety and security officers of the airport board, and to designate and operate emergency vehicles. Safety and security officers so appointed shall take an appropriate oath of office, in form and manner consistent with the Constitution of Kentucky, and shall serve at the pleasure of the airport board.

183.881 Powers and duties of safety and security officers

- (1) Safety and security officers so appointed shall be peace officers and conservators of the peace. They shall have general police powers to arrest, without process, all persons who within their view commit any crime or misdemeanor. They shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, except that they shall be empowered to serve civil process to the extent authorized by the employing airport board. Without limiting the generality of the foregoing, such safety and security officers are hereby specifically authorized and empowered, and it shall be their duty:
 - (a) To preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the airport facility of their respective airport board, and to protect all persons and property located thereon from injury, harm and damage;
 - (b) To enforce, and to assist officials of their respective airport boards in the enforcement of the lawful rules and regulations of said airport board, and to assist and cooperate with the law enforcement agencies and officers.

Provided, however, that such safety and security officers shall exercise the powers herein granted upon any real property owned or occupied by their respective airport boards including the streets passing through and adjacent thereto. Said powers may be exercised in any county of the Commonwealth where the airport board owns, uses, or occupies property. Additional jurisdiction may be established by agreement with the chief of police of the municipality or sheriff of the county or the appropriate law enforcement agency in which such property is located, dependent upon the jurisdiction involved.

- (2) Safety and security officers may exercise their powers away from the locations described in subsection (1) of this section only upon the following conditions:
- (a) When in hot pursuit of an actual or suspected violator of the law;
 - (b) When authorized to do so pursuant to the agreement authorized by subsection (1) of this section;
 - (c) When requested to act by the chief of police of the city or county in which the airport board's property is located;
 - (d) When requested to act by the sheriff of the county in which the airport board's property is located;
 - (e) When requested to act by the commissioner of the Department of Kentucky State Police;
 - (f) When requested to act by the authorized delegates of those persons or agencies listed in paragraph (c), (d) or (e) above;
 - (g) When requested to assist a state, county, or municipal police officer, sheriff, or other peace officer in the performance of his or her lawful duties; or
 - (h) When operating under an interlocal cooperation agreement pursuant to KRS Chapter 65.
- (3) Safety and security officers appointed pursuant to KRS 183.110 and 183.880 to 183.886 shall have, in addition to the other powers enumerated herein, the power to conduct investigations anywhere in this Commonwealth, provided such investigation relates to criminal offenses which occurred on property owned, leased, or controlled by the airport board. Where desirable and at the discretion of the airport board's police officials, the airport board's safety and security department may coordinate said investigations with any law enforcement agency of this Commonwealth or with agencies of the federal government.
- (4) Safety and security departments created and operated by the airport boards shall, for all purposes, be deemed public police departments and the sworn safety and security officers thereof are, for all purposes, deemed public police officers.
- (5) Nothing in KRS 183.110 and 183.880 to 183.886 shall be construed as a diminution or modification of the authority or responsibility of any city or county police department, the Department of Kentucky State Police, sheriff, constable, or other peace officer either on the property of an airport board or otherwise.

183.882 Qualifications of safety and security officers

All persons appointed as safety and security officers pursuant to KRS 183.110 and 183.880 to 183.886 shall, at the time of their employment, be:

- (1) Not less than eighteen (18) years of age; and

- (2) Comply with the requirements of KRS 61.300, other than the age and residency requirements; and
- (3) Shall possess whatever other requirements as may be set by the airport board which employs them.

183.883 Appointment, promotion and compensation of personnel

The airport board may provide for the appointment or promotion to the ranks and grades and positions of the department such officers and civilians as are considered by the airport board to be necessary for the efficient administration of the department. Such officers and civilians shall receive such compensation as shall be fixed and paid by the board.

TAB 14

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TAB 15

NOTES/MISCELLANEOUS